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Racial Discrimination

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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION

REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION

Ninth periodic reports of States parties due in 1999

Addendum

China: Hong Kong Special Adminstrative Region*

[3 October 2000]

* This document is part of the eighth and ninth periodic reports of China. (See CERD/C/357/Add.4 (Part I)).

All annexes referred to in the report may be consulted in the files of the secretariat.

The information submitted by China on the Hong Kong and Macau Special Administrative Regions, in accordance with the guidelines for the initial part of the report of States parties, is contained in HRI/CORE/1/Add.21/Rev.2.

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I. INTRODUCTION

Background

1. In June 1997, the Permanent Representative of the People's Republic of China to the United Nations notified the United Nations Secretary-General that the International Convention on the Elimination of All Forms of Racial Discrimination would continue to apply to the Hong Kong Special Administrative Region (HKSAR) with effect from 1 July 1997 and that the Central People's Government of the People's Republic of China (CPG) would assume responsibility for the international rights and obligations arising from the application of the Convention to the Region. This report on the HKSAR under article 9 of the Convention is submitted in accordance with that responsibility.

2. Having regard to the fact that the last (fourteenth) report on Hong Kong was submitted by the Government of the United Kingdom (CERD/C/299/Add.9, chap. III, sect. G) and subsequently considered by the Committee on the Elimination of Racial Discrimination (the Committee) in March 1997, we take the opportunity to inform the Committee of certain significant developments between the date of its previous hearing and 30 June 1997 - a period during which the CPG was not responsible for the rights and obligations arising from the application of the Convention to Hong Kong - in this introductory section.

Developments between March and 30 June 1997

3. There were two developments of note:

(a) Conclusion of the study and consultations on racial discrimination: in paragraph 254 of the fourteenth periodic report, we told the Committee that work on a study on racial discrimination would commence later in 1996. We hoped to complete it and report its findings to the Legislative Council in the 1996/97 session. In late 1996, we consulted the Consuls-General, local ethnic minority groups, community organizations, human rights organizations, District Boards, chambers of commerce and trade unions on issues of racial discrimination. The aim was to establish whether racial discrimination existed in Hong Kong and, if so, its nature and extent, and possible options for addressing such problems as might be found to exist. We published our findings in February 1997 for public consultation. In June 1997, we reported the results of the consultations to the Legislative Council. Some 80 per cent of respondents opposed legislation in this area. But almost all considered that we should address the issue through educational and administrative measures. This was the course that we decided to pursue;

(b) The Hon. Elizabeth Wong's Member's Bill: a Member's Bill - the Equal Opportunities (Race) Bill - was introduced by the then legislator the Hon. Elizabeth Wong in 1996 and for the Legislative Council's decision in June 1997. The Bill sought to make it

unlawful to discriminate against a person on the ground of race in the areas of work, accommodation, education, the provision of goods, facilities and services, the administration of laws and government programmes and the activities of clubs. As indicated in subparagraph (a) above, the outcome of our public consultation indicated that legislation was unnecessary or undesirable, at least at that stage. The enactment of legislation in this area was clearly against the majority view of the community. The then Legislative Council debated the Bill on 27 June 1997, voting to reject it.

The report

4. The report covers the period from 1 July 1997 to 31 December 1999. In general, the position during the reporting period remains essentially as described in the last two reports on Hong Kong. The framework of legal protections (the rule of law, the Bill of Rights Ordinance and judicial independence) remains in place. Indeed, it has been strengthened by the constitutional protections in the Basic Law, article 39 of which provides that the provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong shall remain in force and shall be implemented through the laws of the HKSAR.[1] Details of the implementation of the Convention are set out below.

II. INFORMATION IN RELATION TO EACH OF THE ARTICLES IN PART I OF THE CONVENTION

Article 1. Definition of racial discrimination

5. The commentary on article 1 in the Manual on Human Rights Reporting advises parties to:

(a) Discuss their policy with regard to racial discrimination and the legal framework of such a policy: we do so in paragraphs 4-16 below, in relation to article 2 and in the General Framework section of the revised core document. The revised core document submitted with the present report is an updated version of the one submitted with our report under the International Covenant on Economic, Social and Cultural Rights (ICESCR) (which itself updated the version submitted with our report under the International Covenant on Civil and Political Rights (ICCPR);

(b) Provide information on how the Convention and the rights put forward in it become part of the domestic legal order: again, we address these matters in paragraphs 4-16 below, in relation to article 2 and in the revised core document;

(c) Provide general background information on the reporting State, and make special reference to the demographic composition of the population, and to any problems confronting different ethnic groups: we have addressed this to the best of our present ability in the revised core document and, in relation to certain special groups, in paragraphs 27-64 below in relation to article 2 of the Convention. In this regard, we wish to draw the Committee's attention to the

note in section (e) of the revised core document concerning the ongoing demographic study of Hong Kong's ethnic composition and the 2001 Census. Pending the findings of those exercises, we recognize that our ability to meet the Committee's requirement for demographic information is constrained by a lack of data. We will make the results of the study available to the Committee as soon as they are available. And we hope to include the findings of the 2001 Census in our next report under the Convention.

Article 2. Policy of eliminating racial discrimination

Existing legislative framework

6. Article 39 (1) of the Basic Law (the full text is contained in annex 1) provides that the provisions of the ICCPR and the ICESCR as applied to Hong Kong shall remain in force and shall be implemented through the laws of the HKSAR. Article 39 (2) provides that the rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless as prescribed by law, and that such restrictions shall not contravene the provisions of the preceding paragraph. Article 41 of the Basic Law provides that persons in Hong Kong other than Hong Kong residents shall, in accordance with the law, enjoy the rights and freedoms of Hong Kong residents prescribed in chapter III of the Basic Law.

7. Equality before the law and equal protection of the law without any discrimination is fundamental to the protection of human rights. Thus, article 2, paragraph 1 of the ICCPR requires States parties to the Covenant to respect and ensure to all individuals within their territory and subject to their jurisdiction the rights recognized in the Covenant without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Article 26 entitles all persons to equality before the law, as well as equal protection of the law. It further provides that the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. In Hong Kong, those provisions are constitutionally entrenched by virtue of article 39 of the Basic Law.

8. The legal status of international treaties that apply to Hong Kong (including human rights treaties) is explained in paragraph 99 of the revised core document.

The Hong Kong Bill of Rights Ordinance

9. As explained in paragraph 100 of the revised core document, the Hong Kong Bill of Rights Ordinance (BORO) (chapter 383 of the laws of the HKSAR) gives effect in local law to the provisions of the ICCPR as applied to Hong Kong. Article 1, paragraph (1) and article 22 of the BOR give domestic legal effect to the respective provisions of article 2, paragraph 1, and article 26 of the ICCPR. The BORO is binding on the Government and public authorities and any person acting on behalf of the Government or a public authority.

Existing anti-discrimination laws

10. In paragraph 20 of the thirteenth report,[2] we explained that, at that time (1995) Hong Kong had no specific laws against discrimination on the part of private individuals. Anti-discrimination legislation was a relatively new area of law, of which Hong Kong had little experience. The approach adopted by the Government was to start first with "a more confined scope", concentrating on areas where there was a clear need and public demand for action. That remains our approach.

11. At the time of the submission of the thirteenth report, we were taking action to introduce specific legislation to prohibit discrimination on the grounds of sex and disability, in both the private and the public sector. We are pleased to inform the Committee that, since then, three anti-discrimination ordinances have been enacted. They are the Sex Discrimination Ordinance (SDO) (enacted in July 1995 and entering into full force in 1996), the Disability Discrimination Ordinance (DDO) (enacted in August 1995 and entering into full force in December 1996), and the Family Status Discrimination Ordinance (FSDO) (enacted in June 1997 and entering into full force in November of the same year). The Equal Opportunities Commission (see para. 110 of the revised core document) is responsible for their implementation.

12. Other statutory protections against acts of discrimination are described in paragraphs 71-74 below in relation to article 4 of the Convention.

Review of legislation in the light of the Bill of Rights

13. As explained in the fourteenth report,[3] after the BORO came into operation in June 1991, the Government reviewed local laws in the light of its provisions. By 31 December 1999, some 41 amending ordinances and subsidiary legislation had been enacted to bring existing laws into line with the BORO and hence with the ICCPR to which it gave domestic effect. A list of the amending laws is at annex 3. In compliance with article 39 of the Basic Law, the Government has continued to ensure that - before its submission to the legislature - every new legislative proposal is consistent with the ICCPR, the ICESCR and international labour conventions as applied to Hong Kong.

14. In continuance of that process, we are reviewing the Chinese Temples Ordinance (chap. 153) with a view to ensuring its compatibility with the BOR. The provisions in question relate to registration requirements, restrictions on the location of temples, and revenue controls that apply exclusively to Chinese temples. In 1928, when the Ordinance was enacted, there were sound social reasons for these impositions. But it is for consideration whether they remain valid in the social and economic circumstances of twenty-first century Hong Kong.

Policy of eliminating racial discrimination

15. The HKSAR Government is committed to the promotion of equal opportunities for all and firmly believes that all forms of discrimination - including racial discrimination - are wrong. At the same time, we believe that each form of discrimination has its own characteristics, including the particular ways in which they may be manifest in Hong Kong. Therefore, strategies for combating them must be appropriate to the particular form of discrimination that

they are intended to address. Thus, in the case of discrimination on the grounds of sex, disability and family status, we have considered the legislative approach to be appropriate. In the case of discrimination on the grounds of race and sexual orientation, our considered view - following extensive research and public consultation - is that, for the present, a combination of administrative measures and public education offers the best way forward.

16. To that end, we have spent some $7 million over the two years 1997 to 1999 on measures to promote equal opportunities in those two areas. Those measures include extensive publicity programmes, community participation projects and discrete codes of practice for employers and employees.

Legislation: the ongoing debate

17. During the reporting period, the Hon. Christine Loh sponsored a Member's Bill - the Race Discrimination Bill - that, in substance, was similar to that sponsored by the Hon. Elizabeth Wong in 1997 (paragraph 3 (b) of the Introduction). At the time of finalizing this report, we were studying revisions that the Honourable Member had made.

18. In its concluding observations on the thirteenth report (A/51/18, para. 253), the Committee recommended that the BORO be amended to extend the prohibition of discrimination to acts committed by private citizens, groups or organizations. In its concluding observations on the fourteenth report (A/52/18, para. 40), the Committee reiterated the concern, adding that "article 2, paragraph 1 (d) of the Convention, makes it an obligation for States parties to prohibit, including by the adoption of legislation, racial discrimination 'by any persons, groups or organization'".

19. Commentators have echoed this concern, arguing that our approach of relying exclusively on public education to combat racial discrimination ignores the need to protect minorities from discrimination on the part of the majority. They also say that our practice of holding public consultations on these matters panders to "majoritarian" views in that it amounts to asking the discriminators whether there needs to be a law to stop them discriminating. And, by not legislating against this form of discrimination, we are failing to meet our obligations under article 26 of the ICCPR and articles 2 and 5 of the Convention.

20. We agree that Governments should protect minorities from discrimination. This is a fundamental principle of the BORO, which binds public bodies, the Government and their agents. It is also true that Governments must sometimes take the lead ahead of popular consensus. But, in our view, they must also be attentive to the climate of public opinion. A balance must be struck between conflicting pressures and judgements made about what is appropriate at particular times in particular places. Legislation with wide-reaching social implications requires the support of the community or it will not be effective. This is particularly true of anti-discrimination legislation that intimately impinges on the daily lives of ordinary people.

21. In June 1996 and June 1997 - with the object of establishing whether discrimination on the grounds of sexual orientation and race existed and, if so, their nature and extent - we conducted discrete studies and consultations on these forms of discrimination. In both cases,

over 80 per cent of respondents were opposed to anti-discrimination legislation. But there was unanimous support for the use of educational means to address the issues. In June 1997, having examined the findings of the study and public consultations conducted by the then Home Affairs Branch, the Executive Council decided that the Administration should not, at that stage, legislate against discrimination on the ground of race. Instead, it should pursue non-legislative measures to promote equal opportunities. The decision was made public later that month in the speech made by the Secretary for Home Affairs at the Second Reading Debate of the Hon. Elizabeth Wong's "Equal Opportunities (Race) Bill".[4] The Secretary explained that the Government's policy was to deal with racial discrimination through a sustained programme of publicity, public education and self-regulation.

22. In so advising the Legislative Council, we undertook to revisit the subject one year thereafter. Accordingly, in July 1998, we submitted a paper to the Council's Panel on Home Affairs, reaffirming our conviction that self-regulation remained preferable to coercion. But we again undertook to re-examine the issue and have recently completed consultations with selected districts and the Consular Corps. The exercise has shown that there have been no changes of circumstance that might indicate a need for legislation.

23. Thus, the public consultations have clearly indicated that the Government cannot look for community support for legislation in this area, at least for the time being. In the course of the various consultations, fears were expressed that the introduction of such legislation could engender resentment on the part of the majority, to the detriment of the minorities for whose benefit it was intended. Hong Kong, it was felt, was a cosmopolitan city whose citizens were well aware that their own best interests lay in establishing and maintaining good relations with all peoples and all races. They did not need legal compulsion towards that end.

24. The fact remains that Hong Kong, one of the world's most compact communities, is a tolerant and cosmopolitan society where persons of every race, colour and nationality live together in a remarkable degree of harmony: racial discrimination is not a significant problem. Nevertheless, our minds are not closed and we shall keep the situation in view. Pending any significant change of circumstances, we will persist with our efforts to raise public consciousness of the issues and, through continuing educational initiatives, gradually to foster a culture of mutual understanding, respect and tolerance. To that end, we have actively pursued a programme of administrative and educational measures in compliance with the 1997 directive of the Executive Council. Those measures are explained below.

Administrative measures

25. The Government is committed to eliminating all forms of discrimination in employment, including racial discrimination. The "Code of Practice Against Discrimination in Employment on the Ground of Race" (annex 4) encourages employers to apply consistent criteria in a wide range of aspects of employment (such as recruitment, training, promotion, dismissal and so forth). Such criteria should not relate to race unless race is a genuine occupational requirement "for reasons of authenticity".[5]

Educational measures

26. Annex 5 lists the measures that we have taken in this area.

Special groups

27. In this section, we discuss four groups that have been the subject of concern both locally and internationally. They are: workers from outside the HKSAR (foreign domestic helpers and imported workers), new arrivals from Mainland China, the Nepalese community, and refugees and other migrants from Viet Nam. This is not to deny the special nature of Hong Kong's other - and numerous - minority groups, such as the substantial and well-established South Asian communities, those from South-East Asia, or the steadily increasing African communities (particularly persons of Nigerian origin). The discussion below essentially describes the four groups in question and attempts to set their special difficulties in context. For the most part, we have deferred discussion of specific areas of concern in paragraphs 95-163 below in relation to article 5. This is because most relate to the civil, economic, and social rights in articles 5 (d) and (e). But there are some issues that we have chosen to address here either because they are essential to an understanding of the groups in question or because they relate to the question of equality before the law which is integral to any discussion of article 2.

Workers from outside the HKSAR

28. For the avoidance of doubt, we should at the outset acknowledge that a significant percentage of both our settled and relatively transitory minority communities comprise entrepreneurs and top corporate management: that is to say, employers and job creators. They represent as many nations and ethnicities as do those who come to Hong Kong as employees. They are a highly valued sector of our community and the Convention applies as much to them as it does to others. However, this section of the report - like the corresponding section on economic and social rights (in relation to article 5: paragraphs 95-163 below) focuses on those who come to Hong Kong as employees, that is:

(a) "Expatriates": these comprise professionals, academics, and persons with technical expertise - or administrative and managerial skills - of value to, and not readily available in, Hong Kong. This group comprises persons from many nations. They negotiate their own salaries, terms and benefits with their employers. In terms of their employment in Hong Kong, the Government requires only that their remuneration "packages" be set at levels that do not undercut local persons with comparable qualifications and that there is no likelihood of their becoming a burden on Hong Kong;

(b) Foreign domestic helpers: this is the largest group and almost exclusively comprises women. Foreign domestic helpers are admitted under standard contracts, terms and conditions: see paragraph 131 below in relation to article 5 (e) (i) of the Convention. Since their first admission in the early 1970s, their numbers have consistently increased in step with Hong Kong's economic expansion. By way of illustration, there were 170,971 at the end of 1997, 180,604 at the end of 1998 and 193,700 at the end of 1999; and

(c) Imported workers: these are skilled workers admitted into the HKSAR for employment under the labour importation schemes: see also paragraph 131 below in relation to article 5. Their terms and conditions of work are discussed in paragraphs 132 to 133 below in relation to article 5 (e) (i) of the Convention. They were admitted under the Supplementary Labour Scheme[6] (introduced in 1996); the - now obsolete - General Labour Importation Scheme (GLS: introduced in 1989 and closed to applications in 1995); and the - also obsolete - Special Labour Importation Scheme for the New Airport and Related Projects (SLIS: introduced in 1990 and closed in March 1999). Their numbers have decreased with the conclusion of these schemes, declining from 6,697 at the end of 1997, to 4,092 at the end of 1998, and to 2,557 at the end of 1999.[7]

Equal protection under the law

29. Workers from outside the HKSAR, including foreign domestic helpers and imported workers, enjoy the same rights, benefits and protection under the labour legislation as local workers, irrespective of their race, colour, descent or national or ethnic origin. A summary of those rights is at annex 6. There is further discussion of the worker protections in paragraphs 137-139 below in relation to article 5 (e) of the Convention.

30. The Labour Department takes vigorous action to safeguard the employment rights and benefits of foreign domestic helpers and imported workers. It investigates complaints against employers of foreign domestic helpers and makes regular inspections of the places where imported workers live or work to ensure that they enjoy all their legal and contractual entitlements.[8] Where it finds infringements of statutory/contractual obligations, it may prosecute the employers and/or subject them to administrative sanctions.

The two-week rule

31. If the employment contract of a foreign domestic helper or an imported worker is prematurely terminated, the worker is permitted to remain in the HKSAR for the remainder of the permitted limit of stay, or for two weeks from the date of termination of contract, whichever is the shorter. This is commonly known as the "two-week rule".

32. In its concluding observations on the thirteenth report (A/51/18, para. 239) the Committee expressed concern about the "two-week rule" and it recommended that the rule "be modified to allow foreign workers to seek new employment in Hong Kong when their employment contracts are terminated" (para. 253). In expressing its concern, the Committee added that:

> "In view of the fact that the overwhelming majority of the persons affected by this rule are female Filipino foreign domestic workers, this rule appears to have discriminatory aspects under the terms of the Convention, which may leave workers vulnerable to abusive employers" (para. 239).

33. The Committee reiterated this concern in its concluding observations on the fourteenth report (A/52/18, para. 41), adding that the rule might "leave the workers concerned extremely vulnerable and in precarious conditions". The Committee recommended that:

> "special attention be given by the government of Hong Kong to the situation of the foreign workers subject to the 'two-week rule' and that all the necessary measures, including the modification or repeal of that specific rule, be undertaken to ensure the protection of all their rights under the Convention" (para. 49).

34. Some commentators have echoed the Committee's views, adding that the rule is doubly discriminatory in that it applies only to workers from developing countries.

35. As we have explained in our report under the ICCPR (in relation to article 8 of that Covenant) (CCPR/C//HKSAR/99/1) the rule was introduced in early 1987 to curb various abuses that had previously been extensive. These abuses included such practices as "job-hopping", whereby workers deliberately terminated their contracts in order to change employers and stay on indefinitely in Hong Kong. These problems were recognized by the Judicial Committee of the Privy Council (on appeal from the Hong Kong Court of Appeal) in Vergara and Arcilla v. Attorney-General ([1989]1 HKLR 233). The Judicial Committee rejected a challenge, by way of judicial review, to the validity of the two-week rule. It recognized that the former policy - which permitted foreign workers, upon ceasing employment, to stay in Hong Kong for up to six months - had been abused. In its judgement, the Judicial Committee said:

> "Some [foreign domestic helpers] were deliberately breaking their contracts early in the six-month period in order to work in other part-time or full-time jobs until the period of stay had expired, or in order to find another employer. This gave rise to complaints by the employer who had made all the arrangements to bring the [helper] to Hong Kong and had paid the travel expenses. It also gave rise to complaints by local people who wished to secure employment as part-time domestic helpers and who found themselves in competition with [foreign domestic helpers] who had only been admitted to work full-time. Moreover it resulted in some cases in the employment of [foreign domestic helpers] in jobs for which, under general policy, foreign nationals were not admitted, for example, bars and clubs" (para. 147).

36. We have always rejected any suggestion that the rule is based on or entails racial discrimination, either in the literal sense of that term or in the broader sense that it has in the Convention. The rule applies to all foreign domestic helpers and imported workers, whatever their country of origin. Most of the persons affected by the rule are indeed female domestic helpers from the Philippines. But it applies equally, and without discrimination, to domestic helpers from other countries and to the imported workers, who are mostly from Mainland China. The imposition of special restrictions on the employment of foreign workers, as distinct from workers who are permanent residents of the territory, is a natural and normal aspect of immigration control. And we consider this particular restriction to be an intrinsically appropriate, reasonable and proportionate response to the problems described above.

37. Nevertheless, all necessary measures are taken to ensure a fair balance between the legitimate interests of foreign domestic helpers on the one hand and those of their employers and the public interest on the other. We also strive to prevent abusive treatment by employers. Thus, in exceptional circumstances - especially where there is evidence of abuse by employers, and also if employers are prevented from honouring their contracts because of death, financial

difficulties or emigration - helpers may be permitted to change employment without first leaving the territory and/or to pursue claims for outstanding entitlements against their former employers.[9] Indeed, some 80 per cent of all applications for such permission were granted in 1999.

The Nepalese community

38. In the outline report that we published for the public consultations that preceded the drafting of this report, we described the Nepalese as "a new community". Some commentators questioned that appellation on the ground that the Nepalese presence in Hong Kong is of long standing. That is technically true: there have always been a small number of traders from Nepal carrying out business in Hong Kong.

39. But the major Nepalese presence traditionally comprised Gurkha soldiers and their families serving with the British garrison. Like the British units with which they served, they lived in military barracks in relative isolation from the community. And, by virtue of the tripartite agreement between Nepal, India and Britain, both soldiers and families were prepared - in terms of education and post-service training - for eventual return to, and resettlement in, Nepal. However, before 1 January 1983, persons born in Hong Kong, irrespective of their immigration status, had the right to land (now right of abode) in Hong Kong. Consequently, Nepalese children born here, before that date, to Gurkhas serving in the garrison automatically acquired first the right to land in Hong Kong and, later, the right of abode.

40. As the following table demonstrates, relatively few Nepalese took advantage of their right of abode before the mid-1990s. Thereafter, probably because Hong Kong was then enjoying a high level of both absolute and relative prosperity, the numbers increased significantly:

Nepalese nationals living in Hong Kong

As at end of the year	Permanent resident	Temporary resident[a]	Total
1990	162	178	340
1991	92	221	313
1992	68	353	421
1993	182	727	909
1994	806	1 125	1 931
1995	3 259	2 220	5 479
1996	5 518	4 490	10 008
1997	7 589	6 692	14 281
1998	8 434	8 917	17 351
1999	8 420	9 261	17 681

[a] Here, "temporary residents" are mostly persons who have entered for settlement but have not yet completed the seven years of continuous residence necessary to qualify for permanent resident status.

These figures - which relate to Nepalese nationals - do not account for all the ethnic Nepalese living in Hong Kong. An unknown number of Nepalese residents have acquired various forms of British (and possibly other) nationality and are therefore among the United Kingdom nationals in Hong Kong.

41. Some Nepalese residents speak excellent Chinese and English and have secured a prosperous living - as entrepreneurs and as manager/professionals. But many, perhaps most, have found their lack of fluency in those languages - and of locally recognized qualifications - a handicap in the quest for work and/or self-betterment through further education. These and other concerns are discussed in paragraphs 157-163 below in relation to article 5 of the Convention.

42. The HKSAR Government sympathizes with their difficulties and very much wishes to establish better communications with the community in order to obtain a clear and coherent understanding of its needs and how best they might be met. One difficulty in attaining that understanding is the highly fragmented nature of the community. Our hope is that the ongoing survey and the 2001 Census will go far towards ameliorating the position.

New arrivals from Mainland China

43. These are persons who have recently migrated to the HKSAR from Mainland China for permanent settlement. They are Han Chinese, ethnically the same as Hong Kong's settled majority. But as new arrivals, they are a distinctive group within the ethnic majority. They have entered in accordance with an established programme of quota-based immigration designed to foster family reunification at a rate that Hong Kong's economic and social infrastructure can absorb without excessive strain. For many years, the quota was 75 persons a day, or 27,000 a year. That quota has steadily increased and the current rate is 150 a day, or about 54,000 a year. Further details are in paragraphs 45 and 46 below.

44. Traditionally, persons entering for settlement in this way were gradually absorbed into the mainstream population after a period of adjustment that varied between individuals. Indeed, a substantial percentage of the present-day population comprises persons who entered in this way in the decades since the Second World War and their Hong Kong-born descendants. However, the increased quota and the entry of those with entitlement under article 24 of the Basic Law have substantially increased the rate of entry. There are now a much greater number of new residents - mostly mothers and children - who are largely unfamiliar with Hong Kong's way of life. Like immigrants everywhere, they share certain difficulties that people commonly encounter when adapting to life in a new environment. Perhaps because of their position in society, they are sometimes treated unfairly and their situation has attracted considerable discussion and public concern.

45. As we explained to the Human Rights Committee in our report under the ICCPR, in relation to article 26 of that Covenant, Mainland China is Hong Kong's principal source of immigrants. Over 90 per cent come to the SAR for family reunion. Entry is controlled by the quota system described in paragraph 43 above. But the extent of demand is such that not all members of a family can obtain the necessary exit permits at the same time from the Mainland

authorities. This has led to the problem of "split families" which is largely the result of cross-boundary marriages between Hong Kong men and Mainland women, who are, of course, subject to the quota system and must therefore wait in the immigration queue. The subsequent birth of children increases the numbers so waiting.

46. To expedite entry for family reunion, a special sub-quota of 48 places has been reserved (within the overall daily quota of 150) to enable Mainland mothers to take with them a child aged under 14 when they enter Hong Kong for settlement. Nevertheless, some families continue to arrange for their children to enter Hong Kong illegally. When discovered, they are removed to the Mainland: a practice that some commentators consider to be inhumane. But removal remains necessary both in justice to those waiting their turn in the queue and to preserve an orderly and manageable rate of entry.

47. Additionally, we have devised measures to manage and contain the additional demand engendered by article 24 (2) (3) of the Basic Law.[10] That provision accords right of abode in the HKSAR to children of Chinese nationality born outside Hong Kong who - at the time of their birth - had at least one parent who was a Hong Kong permanent resident of Chinese nationality. As at 1 July 1997, an estimated 66,000 Mainland residents qualified for the right of abode under the provision. To expedite their entry, the relevant sub-quota was increased from 45 to 60 a day from January 1998. Between 1 July 1997 (when the Basic Law came into effect) and 31 December 1999, about 68,000 eligible children entered Hong Kong for settlement.

48. The increased rate of migration has substantially increased the number of new residents. Between 1 July 1995 (when the daily quota was increased) and 31 December 1999, some 246,500 people from the Mainland have settled in Hong Kong. As we advised the Human Rights Committee, many (some 20 per cent) cannot speak either Cantonese or English and so have difficulty in communicating with their neighbours, co-workers and schoolmates. The children have been educated in a different pedagogic tradition and are unfamiliar with the Hong Kong curricula. Adults often find that their qualifications are not recognized in Hong Kong. Together, these things can result in disorientation, "culture shock" and other difficulties such as finding work or school places, particularly on first arrival.

49. Other difficulties arise from family circumstances. The (Hong Kong-based) husbands are often less well off than their Mainland-based families had expected. Their living conditions may have been adequate when they were single, but, often, they are less than adequate for families with children. These difficulties, compounded by those described above, have in some cases led to family breakdown, domestic violence, and spouse/child abuse.

50. As we informed the Human Rights Committee, the Government and NGOs are acutely aware of these matters and, together, have taken active steps to address them. New arrivals have access to the full range of welfare services, including counselling, day and residential childcare services, financial assistance and housing assistance where compassionate grounds apply. And as explained in paragraph 97 of the United Kingdom's third report on Hong Kong under the ICESCR (E/1994/104/Add.10), Government subsidizes the Hong Kong Branch of the International Social Service (ISS), to provide post-migration support, including information

and inquiry services; orientation sessions; short-term counselling and referral services. The ISS subvention is a long-standing arrangement (it began in 1972). But since 1996, following the decision to increase the rate of immigration, Government has provided it with additional resources to strengthen its post-migration services.

51. With the cooperation of the Guangdong Provincial Government, the ISS is also organizing a pre-migration service in Guangzhou with funding support of the Hong Kong Jockey Club. The programme comprises casework and group counselling, orientation programmes, English and computer classes and other social activities. It targets families and their children who will come to Hong Kong within three years so that they can more readily assimilate on arrival.

52. To meet these challenges, both NGOs and Government have seen the need for a coordination mechanism to ensure that the various programmes for new arrivals are coherently focused. To that end, in December 1995, the Government established a "Coordinating Committee on New Arrival Services" to monitor and assess the services for new arrivals from the Mainland. It is chaired by the Director of Home Affairs. Its members comprise representatives of relevant government agencies and the Hong Kong Council of Social Services. They meet regularly to identify and examine the problems encountered by new arrivals[11] and recommend measures for both Government and NGOs to pursue. At the local level, the Committee's work is complemented by District Coordinating Committees on New Arrival Services in each of the 18 districts.

53. In January 1998, the Committee was further strengthened by the establishment of the "Steering Committee on New Arrival Services". This is a higher-level body chaired by the Secretary for Home Affairs. It oversees the work of the Coordinating Committee and determines strategy for the provision of services.

54. Welfare planning naturally takes account of the anticipated numbers of new arrivals from the Mainland. But social provision also comprises non-welfare services in areas such as:

(a) Education: the Government has initiated measures to ensure that the newly arrived children are enrolled in schools. We have also introduced support services to help them adapt to the local system. The initiatives in this area are discussed in the initial report on the ICESCR (E/1990/5/Add.43) in relation to article 13 of that Covenant;

(b) Employment: the Government has established an "Employment and Guidance Centre for New Arrivals" in the Labour Department to help new arrivals find employment. New arrivals also have access to the retraining courses offered by the Employees' Retraining Board, which again is explained in our initial report under the ICESCR, in relation to article 6 of that Covenant. In September 1997 and March 1999 respectively, the Labour Department established two "Employment and Guidance Centres". These provide services designed to help new arrivals to adapt to their new working environment. The services include intensive job matching and referrals, provision of labour market information, employment counselling, and briefings on practices/conditions of work in Hong Kong. The Centres have reference libraries with publications on employment and training opportunities and audio-visual facilities; and

(c) General: the Government has published the "Service Handbook for New Arrivals" to provide general information on life in Hong Kong and details of services available to new arrivals. The handbook is distributed free of charge to new arrivals upon their arrival in Hong Kong and is readily available at government outlets.

55. Other recent initiatives include:

(a) "District-based Network Employment Support Programme": this is a two-year project, financed by the Lotteries Fund.[12] Under the programme, 41 NGOs - coordinated by the Hong Kong Council of Social Services - provide integrated services to the unemployed, including new arrivals. Those services include counselling, job training, development programmes, job referrals and replacement services;

(b) Integrated Neighbourhood Projects: these are Government-subsidized initiatives to serve vulnerable groups, including new arrivals, in selected old urban areas. Six such projects have been operational since 1999; and

(c) Projects: six NGOs, with funding support from the Hong Kong Jockey Club, provide services to facilitate new arrivals' integration into the local community. The services include orientation programmes, counselling, social/mutual aid and volunteer groups, community education programmes, retraining programmes, hotline services, and so forth.

Refugees, migrants and illegal immigrants from Viet Nam

56. At the outset, and to avoid stereotyping, we must affirm that there is a small community (whose numbers are unknown) of Vietnamese persons living in Hong Kong who are either permanently or temporarily settled here. They comprise the typical mix of merchants, professionals, blue- and white-collar workers. Ethnically, they comprise native Vietnamese, Chinese and persons of mixed race. Like the other minority communities, they include an unknown number of persons who have acquired other nationalities, particularly United States nationality. They entered Hong Kong legitimately and are not refugees, though some may have been at some time in their lives. But it is the question of refugees from Viet Nam, and not that of the established Vietnamese community in Hong Kong, that has been the focus of both local and international concern and therefore of this section of the report.

57. As at the end of 1999, there were about 970 Vietnamese in Hong Kong who had been granted refugee status and, accordingly, permission to stay in Hong Kong pending resettlement overseas.[13] They are housed in an open centre at Pillar Point (in the New Territories), which is operated by the Office of the United Nations High Commissioner for Refugees (UNHCR). There is no restriction on their movement. These persons either have no family connections overseas, or have criminal records and/or problems of drug addiction. These factors - and "compassion fatigue" in the main resettlement countries - mean that their acceptance for resettlement elsewhere will be difficult.

58. The Government has sought to encourage them to lead a normal life and to be self-reliant pending their resettlement. Many are already gainfully employed and self-supporting. Half now live in the general community. To further this process, refugee children have been enrolled in

local schools. Services at the Pillar Point Centre are gradually reduced, and residents are encouraged to seek services, such as medical and social services, outside the camp in the same way as ordinary Hong Kong residents. UNHCR and the NGOs will continue to help needy refugees. And the Government will provide additional assistance when individual cases so warrant.

59. There also remained about 560 Vietnamese persons who had been screened out as non-refugees in accordance with the 1951 Convention and the 1967 Protocol relating to the Status of Refugees. Most have been released on recognizance and live at the Pillar Point Centre. Under the internationally agreed Comprehensive Plan of Action,[14] these screened-out Vietnamese migrants should be repatriated to Viet Nam. However, the Vietnamese Government has been refusing to recognize some 330 of them as its nationals or to agree to their repatriation. And others have yet to be repatriated for reasons such as ill-health, serving prison sentences, involvement in court proceedings, or because they are missing. Despite the slow progress, we have continued to seek the return of those rejected by the Vietnamese Government. The others will also be repatriated when the factors delaying their repatriation are resolved.

60. Additionally, Vietnamese illegal immigrants continue to come to Hong Kong illegally in search of employment: a total of 953 arrived in 1999. Like other illegal immigrants, they are detained when intercepted, and arrangements are made for their prompt repatriation to Viet Nam.

Ex-China Vietnamese

61. This group of about 350 people predominantly comprises ethnic Chinese who fled Viet Nam in the early 1980s and settled in Mainland China. Most of those now in Hong Kong entered, without valid documentation, in 1993. Since they had already found protection in Mainland China, they had lost the right to seek resettlement outside Mainland China.[15] Their removal to Mainland China has been delayed pending judicial review of the decision to so remove them. At the time of finalizing this report, those proceedings were still in progress. In the meantime, all concerned have been released on recognizance.

Integration into the local community

62. Commentators have proposed that - on humanitarian and de minimis grounds - the remaining refugees should be offered the opportunity of settling in Hong Kong. While the remaining population of refugees is not large, the proposal has presented great difficulties. Immigration pressures on Hong Kong have been - and remain - immense and immigration controls have to be strictly enforced. The spouses and children of Hong Kong residents from Mainland China often have to "queue" for several years before joining their families here. And it would have been seen as unfair to them if the refugees - who have no ties with Hong Kong - were granted residential status.

63. However, by early 2000,[16] it was clear that the chances of securing their resettlement were remote. Having exhausted all other options, we decided that the only effective and durable solution lay in the integration into Hong Kong society of the 973 remaining refugees, the 327 "non-nationals" and their 108 family members. The remaining 132 Vietnamese migrants

whose repatriation has been delayed for the reasons given in paragraph 59 will be repatriated once those impediments are removed. The position of the approximately 350 remaining ex-China Vietnamese remains as explained in paragraph 61.

64. A consequence of the decision will be the closure, in May 2000, of the Pillar Point Refugee Centre. Its population - comprising approximately 580 refugees, 430 Vietnamese migrants and 60 ex-China Vietnamese - will have to move. Caritas Hong Kong, which - since 1998 - has run the Centre on behalf of UNHCR, will assist them to find new accommodation. Those who experience hardship may apply for Comprehensive Social Security Assistance and may be considered for compassionate rehousing. The closure is expected to be welcomed by all concerned, including NGOs. Physical conditions there have deteriorated as the Centre approaches the end of its designed life. Maintenance, structural problems and fire safety have become major concerns. Additionally, the Centre has been a source of social problems such as drug dealing and addiction, violence and other crimes. And, because the residents do not pay rent, some have developed a culture of dependency that has impeded their adaptation to a normal, self-reliant, way of life.

Article 3. No racial segregation or apartheid

65. The position remains as explained in paragraph 28 of the thirteenth report. That is, neither apartheid nor any form of racial segregation is practised in Hong Kong. Nor would it be tolerated by Hong Kong's people or Government.

Pattern of settlement

66. The commentary on article 3, in the Manual on Human Rights Reporting (pages 278 and 279), draws attention to the possibility that racial segregation may arise as an unintended by-product of the actions of private persons. It points out that residential patterns can be affected by differences in income and that those differences may sometimes be combined with differences of race, colour, descent and national or ethnic origin. In these circumstances, the inhabitants may be stigmatized and individuals suffer a form of discrimination on both racial and other grounds. With these possibilities in view, the Committee invites Governments to monitor trends towards that situation, to work for their eradication and to describe any such action in their periodic reports.

67. It is true that in Hong Kong, as elsewhere, some ethnic groups are more in evidence in some localities than in others. For example, members of the various South Asian communities have traditionally tended to congregate in the intensely commercial urban area of Tsimshatsui. And some members of the Nepalese community live in "pocket settlements" in the north-western New Territories, near the former British military bases where many of them were born. These patterns have developed partly for economic reasons, but also for reasons of familiarity, mutual support, convenience for business or job purposes, and the human desire to live in contact with one's cultural fellows. But none of the areas concerned is exclusively the preserve of any particular ethnic group: as in all parts of Hong Kong, the majority of the people who live in them are Chinese. In this context, a pertinent consideration is that in planning our new towns,

our policy is to maintain a mix of public and private housing. This contributes, to some extent, to a more balanced community and avoids stigmatization of particular residential areas on, at least, economic and social grounds.

68. In short, there are no marked signs of a trend towards "ghettoization" and it is the Government's policy increasingly to reach out to the ethnic communities with a view to their full participation and integration into the general community of the Hong Kong SAR.

Article 4. No propaganda or organizations which are based on racial superiority

69. Our position remains as explained in paragraph 30 of the thirteenth report. That is, the views of extremist or racist organizations are obnoxious and entirely repugnant to the people and Government of the Hong Kong SAR. Should the activities of such groups or their members breach the law, they are liable to be dealt with by the police under public order and criminal legislation. However, we are pleased to advise the Committee that no such groups exist in Hong Kong: there are no individuals or organizations that carry out acts of racial hatred, be it by deed or by word; nor is there any propaganda based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form.

70. Our view is, as it has always been, that individuals enjoy the right to freedom of opinion and expression guaranteed in article 5 (d) (viii) of the Convention, the ICCPR, the Basic Law, and the BORO. This includes, we believe, the right to express views that the majority of the population may find repugnant, so long as that expression does not manifest itself in the form of violence, or incitement to violence, or hatred. Nevertheless, our existing laws contain adequate provision that would enable any racially motivated acts of violence (or the incitement to such acts) and any activities - whether of individuals or organizations - aimed at inciting racial hatred to be effectively punished or suppressed.

71. The general criminal law of Hong Kong proscribes acts of violence of various kinds, as well, of course, as the incitement of others to commit such acts. For example, killing and causing grievous bodily harm - which may be racially motivated - are offences under section 9A of the Offences against the Person Ordinance (chap. 212). Under section 5A of the Societies Ordinance (chap. 151), the Societies Officer may refuse to register a society or a branch if he reasonably believes that the refusal is necessary in the interests of national security or public safety, public order (ordre public) or the protection of the rights and freedoms of others. An order may also be made under section 8 of the Ordinance to prohibit the operation or continued operation of a society or a branch for the same reasons.

72. Additionally, there are measures in force to prevent television and radio broadcasts containing material that is likely to incite racial hatred or is racially denigrating. The Television Ordinance (chap. 52) and the Telecommunication Ordinance (chap. 106) prohibit television and radio licencees, respectively, from broadcasting any programme, advertisement, announcement or other material that is likely to incite hatred against any group of persons, a group being defined by reference to, inter alia, colour, race, sex, religion, nationality, or ethnic or national

origins. And the Film Censorship Ordinance (chap. 392), enacted in 1988, provides that approval for exhibition of a film may be refused if the film denigrates or insults any particular class of the public by reference to the colour, race, religious beliefs or ethnic or national origins or the sex of the members of that class.

73. Television and radio broadcasts in Hong Kong adhere to Codes of Practice on Programme Standards. These contain provisions forbidding the broadcast of any programme that is likely to encourage hatred against or fear of, and/or considered to be denigrating or insulting to any person or group on the basis of ethnicity, nationality, race, gender, sexual preference, religion, age, social status, or physical or mental disability.

74. Finally, article 22 of the BOR, which reproduces article 26 of the ICCPR, prohibits the Government of the HKSAR and all public authorities - and any person acting on behalf of the Government or a public authority - from engaging in practices that entail racial discrimination.

Article 5. Guarantees of the rights of everyone without distinction as to race, colour, or national or ethnic origin

75. None of the rights specified in article 5 is subject to restriction on the grounds of race, colour or national or ethnic origin.

Article 5 (a). Equal treatment before tribunals and organs administering justice

76. In Hong Kong, all persons, regardless of their race, colour or national or ethnic origin, are equal before the law and have equal access to the courts. This always was the position and is now expressly provided for in article 25 of the Basic Law and articles 1, 10 and 22 of the BOR.

77. Legal aid is available to all persons if they satisfy the Director of Legal Aid that they are financially eligible and that there is justification for legal action. Article 11 of the BOR provides that any person charged with a criminal offence is entitled, in full equality, to legal aid where the interests of justice so require and without payment if he himself cannot pay for it. The operation of the legal aid system is explained in paragraphs 103-105 of the revised core document.

78. In paragraph 33 of the thirteenth report, we told the Committee that, before 1 July 1997, we aimed to put into place a framework for the use of Chinese, along with English, in all judicial proceedings in Hong Kong. We are pleased to inform the Committee that all legal restrictions on the use of Chinese in the courts were lifted before 1 July 1997. Both Chinese and English are official languages for filing and conducting proceedings. In civil proceedings, parties may issue writs, file defences or notices of appeal in either of the official languages. Charge sheets served on the accused in criminal proceedings are in both official languages. The prosecution is obliged - on request - to give persons accused of crimes translations of documents served on them. Defendants, parties and witnesses are free to use any language they choose before the court. Where a defendant or party is not conversant in the official language in which the trial is conducted, interpretation services are provided free of charge by the court.

Decisions made under the Immigration Ordinance

79. Decisions made under the Immigration Ordinance (chap. 115) are subject to the scrutiny of the courts. Persons objecting to decisions made under the Ordinance may apply to the High Court to seek leave for judicial review of the decision. Any person aggrieved by a decision, act or omission taken, done or made under the Immigration Ordinance may make a statutory objection under section 53 of Immigration Ordinance to the Chief Secretary for Administration within 14 days of the decision. The objection will be considered by the Chief Executive in Council. Alternatively, they may petition the Chief Executive in person. Persons subject to removal orders may appeal to the Immigration Tribunal under section 53A of the Immigration Ordinance. Persons aggrieved by immigration decisions or services may lodge complaints with the Immigration Department through the mechanisms described in paragraph 81 below. They may also complain to external bodies such as the Ombudsman and the Independent Commission against Corruption. These rights may be exercised by any person without distinction as to race, colour, or national or ethnic origin.

80. Commentators assert that when a decision that could be the subject of review under section 53 or 53A of Immigration Ordinance is made, the person affected is not told of the right of review. They also argue that deportation decisions should be made by the courts, not by the executive.

81. Persons who are to be deported or who are subject to removal orders are informed that they have the right of review. When the Director of Immigration makes removal orders, he must serve written notice on the persons to be removed, informing them of the grounds on which the orders are made, and their right of appeal to the Immigration Tribunal. In a deportation case, the Immigration Department serves the person concerned with a "Notice of Consideration of Deportation", informing them that they may make representations to the Director of Immigration. Those representations will be carefully considered. A notice posted in all Immigration Department interview rooms informs persons detained under the Immigration Ordinance that they have the right to contact a lawyer. Another notice, which is displayed in all Immigration Department premises to which the public have access, clearly states that complaints against other immigration decisions or services may be made on the spot with the immigration officer-in-charge, or - at any time - with the Department's Management Audit Division. These avenues are also publicized through information booklets available in all public offices.

82. Section 20 of the Immigration Ordinance vests the power to make deportation orders with the Chief Executive, not the judiciary. That power has been delegated to the Secretary for Security. In considering a deportation case, all relevant factors are given due weight. Those factors include the deportee's family connections and length of residence in Hong Kong and the actual penalty imposed by the court. Guilt or innocence and appropriate sentence for a criminal offence are matters to be determined by the courts in accordance with the law and the principles of criminal justice. But decision as to whether a convicted criminal should be allowed to stay in Hong Kong - or to re-enter in future - are matters that are entirely appropriate to the executive authorities. This is because such decisions are based on security, immigration control and other relevant considerations.

Persons in police custody

83. Commentators have said that migrant workers in police custody have been denied access to legal counsel, to call their friends, and/or have not been cautioned before making statements. Our respondents have not provided sufficient information to enable us to investigate specific cases. But we can assure the Committee that the rights of persons in police custody, irrespective of their race, colour, or national or ethnic origin, are clearly displayed in bilingual notices in all police cell blocks and interview rooms. Those rights include the right to make telephone calls to friends or relatives and the right to make private telephone calls to, or communicate in writing or in person with a solicitor or barrister. Persons aggrieved by the conduct of police officers in the execution of their duties – including conduct of the type cited by our respondents - should file complaints with the Complaints Against Police Office (CAPO), whose investigations are monitored and reviewed by the Independent Police Complaints Council, a civilian oversight body (annex 7 explains the police complaints system in greater detail).

Article 5 (b). Security of person

84. The position remains as explained in paragraphs 34 and 35 of the thirteenth report. That is, the right to security of person is principally secured through the Offences against the Person Ordinance, which makes it an offence in law to assault or wound anyone. These provisions apply without distinction as to race, colour, or national or ethnic origin. The penalty for committing such an offence varies depending on the gravity of the assault. The Crimes (Torture) Ordinance provides that torture is an offence under the law of Hong Kong. A person convicted of torture is liable to life imprisonment. Again, the provisions in that Ordinance apply without distinction as to race, colour, or national or ethnic origin.

Article 5 (c). Political rights

Elections to the Legislative Council and District Councils

85. The system of elections to the Legislative Council and the new District Councils is explained in Part I of this report, paragraphs 78-85 of the revised core document. The laws governing them make no reference to race, colour or national or ethnic origin. All Hong Kong permanent residents aged 18 or above and who ordinarily reside in Hong Kong are eligible to apply to be registered as electors. The electorate for functional constituencies comprises major organizations representative of the relevant sectors and members of professions with well-established and recognized qualifications. The electorate of the Election Committee comprises 800 persons, the majority of whom are returned by elections. Again, the relevant provisions[17] make no reference to race, colour or national or ethnic origin.

86. All persons who are registered geographical constituency electors and have ordinarily resided in Hong Kong for the three years immediately preceding the relevant election are eligible to be nominated for candidature in geographical constituencies and election committee elections. They must also be Chinese citizens with no right of abode in any country other than the People's Republic of China.

87. Candidates for election to functional constituencies must be registered electors in the relevant constituencies or have substantial connection with them. They must also be registered geographical constituency electors and have ordinarily resided in Hong Kong for the three years immediately preceding the election. Article 67 of the Basic Law provides that permanent residents of the HKSAR who are not of Chinese nationality or who have the right of abode in foreign countries may become members of the Legislative Council if so elected, subject to their number not exceeding 20 per cent (12 members) of the total membership of the Council. The 12 seats concerned were allocated to the 12 functional constituencies designated for this purpose under section 37 of the Legislative Council Ordinance. Otherwise candidates must satisfy the same requirements regarding citizenship and right of abode as do those for geographical constituencies. The laws governing such candidature make no reference to race, colour or national or ethnic origin.[18]

88. Commentators have noted that foreign domestic helpers had lost the right to vote that they enjoyed before the post-reunification changes to the electoral system. There was concern that this was a manifestation of racial discrimination. Clearly, the HKSAR Government cannot accept that view. We recognize that most of the rights and freedoms in article 5 are to be enjoyed by all persons living in a particular jurisdiction and, in the HKSAR, that is the case. But some rights, of which the right to participate in elections is one, are rights pertaining to citizenship. We believe that this view is consistent with the Committee's General Recommendation 20, made at its forty-eighth session in 1996. It is also consistent with article 25 of the ICCPR ("Every citizen shall have the right and the opportunity ... to take part in the conduct of public affairs ... to vote and to be elected at genuine periodic elections ... [and] to have access ... to public service in his country").

89. To put the issue into the context of Hong Kong's domestic law, article 26 of the Basic Law provides that permanent residents of the HKSAR[19] shall have the right to vote and the right to stand for election in accordance with the law. Whether a person enjoys the right to vote in the HKSAR therefore depends on whether he or she is a permanent resident of Hong Kong. Foreign domestic helpers are generally not permanent residents and therefore - like non-citizens elsewhere - do not enjoy the rights to vote or to stand in Hong Kong elections.

90. Participation in public affairs. Candidates for election are free to publish their election manifestos (and so forth) in any language they wish. But, because over 96 per cent of the population (and hence the potential electorate) are Chinese speakers, relatively few candidates issue materials in either English or in another language other than Chinese. Commentators say that this restricts the ability of non-Chinese persons to exercise their rights to vote and to stand for election. Some consider that - as a minimum - the electoral laws should oblige candidates to make their views known in English and, ideally, in other pertinent languages.

91. The HKSAR Government issues all its election publicity materials in both English and Chinese. But we firmly believe that candidates should be free to decide the contents of their election materials in accordance with the specific needs of their own campaigns.

Equal access to public service

92. The recruitment policy of the civil service and its legal basis are explained in paragraphs 480-481 of our report on the ICCPR in relation to article 25 (c) of that Covenant. Essentially:

(a) Article 99 of the Basic Law provides that - with the exception of the provisions regarding foreign nationals in article 101 - public servants must be permanent residents of the Region. Article 101 provides that the Government of the HKSAR may employ foreign nationals previously serving in the public service in Hong Kong, or those who have become permanent residents of the HKSAR, to serve as public servants in government departments at all levels, except the principal official posts (23 posts at present) which should be filled by Chinese citizens among the permanent residents of the HKSAR with no right of abode in any foreign country. It also provides that "the Government may employ foreign nationals as advisers to government departments and, when required, may recruit qualified candidates from outside the HKSAR to fill professional and technical posts in government departments";

(b) Otherwise, access to the public service on general terms of equality is open to all suitably qualified persons. Recruitment is based on open and fair competition. Candidates who meet the specified entry requirements (which, in turn, are based on qualifications and experience) may apply and compete for vacancies.

93. The Government's localization policy - which is of longstanding - seeks to ensure that the public service is staffed primarily with officers whose roots are in, and who have a sense of commitment to Hong Kong. In the recruitment process, preference is given to qualified and suitable local candidates (that is to say, permanent residents of the HKSAR). Non-local candidates (persons who are not permanent residents of the HKSAR) are recruited only when no qualified and suitable local candidates are available. No distinction is made on the grounds of race or nationality: there are local officers who are foreign nationals and non-local officers who are ethnic Chinese.

94. As at 31 December 1999, the public service comprised 187,025 officers of whom 184,785 (98.8 per cent) were serving on local terms and conditions of service, 1,558 (0.8 per cent) officers on common terms and 682 (0.4 per cent) officers on overseas terms and conditions.[20]

Article 5 (d). Civil rights

(i) Freedom of movement

95. Article 31 of the Basic Law provides that Hong Kong residents shall have freedom of movement within the region and freedom of emigration to other countries and regions. All Hong Kong residents, unless under lawful arrest or detention, are free to travel and take up residence anywhere within Hong Kong, irrespective of their race, colour or national or ethnic origin.

96. Commentators have said that visa controls recently imposed on visitors from South Asia were more stringent than those imposed on visitors from "Western" nations and Japan. Some have also expressed the concern that visitors from South-East Asia, Africa and the Indian subcontinent were often the targets of special operations aimed at controlling entry for illegal purposes or the smuggling of clandestine goods.

97. The Immigration Department conducts checks on selected arrivals to ensure that they are bona fide visitors and do not intend entering for illicit purposes such as prostitution, overstaying, illegal work, or other criminal activities. These checks are consistent with international practice and we do not consider them to be discriminatory. Targets are identified on the basis of intelligence received and past experience, not on such factors as age, sex, social status, ethnicity, or nationality. Visitors from particular countries are subjected to such checks as and when warranted.

98. Similarly, the Customs Department conducts checks on selected arrivals to prevent smuggling of narcotics, firearms and other contraband. Passengers are selected for personal search on the basis of profiling techniques that take account of intelligence and of such considerations as whether their routing, itinerary and places of embarkation include high-risk drug sources. The process is consistent with the risk management techniques recommended by the World Customs Organization for processing arriving passengers. It does not entail discrimination on any grounds, including those of race, colour, or national or ethnic origin.

99. In this context, representatives of the Nepalese community have taken issue with a decision of the Immigration Department to restrict the period of stay granted to Nepalese visitors. They have also said that the numbers of body searches and urine tests conducted on Nepalese visitors are unduly high in comparison with other nationalities. In both respects, they consider that the explanations adduced by the Government (see para. 100 below) are discriminatory and racist.

100. The facts are that, before 28 October 1998, Nepalese visitors could enter Hong Kong for one month without visas. Since then, we have required them to hold visas to visit Hong Kong unless they are in transit and remain airside. The reasons for this change were:

(a) Abuse of the change of status system. In general, persons wishing to enter Hong Kong for settlement, work or study are required to lodge their applications at their place of residence. However, the Director of Immigration exercises a degree of flexibility, allowing persons who have entered Hong Kong for one purpose (usually as visitors) to apply for a change of immigration status without first having to return to their homelands. This is a concession, not a right, and such flexibility is intended to be used sparingly, not as a matter of routine. But from the mid-1990s, over 90 per cent of Nepalese persons applying for settlement did so after entering as visitors and then applying for change of status. Thus, they have effectively made routine use of what is intended to be used judiciously. Such over-use amounts to abuse of the system;

(b) Forged documents. In several instances, Nepalese persons applying for change of status as discussed in (a) above have been found to be using forged documents and fictitious claims to support their applications. Some of the ploys so detected have included using Nepalese

passports that have been unlawfully obtained, impersonating the rightful holders of Hong Kong birth certificates, forged identity documents claiming permanent residents as parents, forged stamps on translation copies of Nepalese citizenship certificates, and so forth. All claims have to be verified with the Nepalese authorities: a fairly lengthy process that some claimants exploit to prolong their stay in Hong Kong;

(c) Fictitious claims. Persons sponsoring applications for the entry of dependants must be able to demonstrate that they are in a position to support the putative dependant. But some Nepalese sponsors have been found to be financially dependent on the persons they are sponsoring. They and others have adduced forged certificates of employment by way of "evidence" of their financial solvency; and

(d) Adverse records. A steady number of Nepalese visitors have been found to have committed immigration offences in recent years. And there has been an increasing trend of visitors seeking to enter on forged Nepalese passports or travel documents.

101. Against this background, we do not consider that the new visa requirement is discriminatory. The criteria on which we determine the imposition of visa requirements are purely quantitative. And similar action has been taken in respect of other countries that have posed similar problems (and engendered similarly unfounded assertions by their nationals). In the present case, action was taken to address a persistent trend of circumvention and abuse. We will reconsider our position should circumstances so warrant.

102. Some commentators say that the conditions of stay granted to South Asian business travellers and tourists are discriminatory. Normally, they say, visitors from those countries are granted two weeks' stay on arrival. Our respondents assert that most other visitors are granted three months.

103. The period for visa-free visits is determined by such factors as whether the nationals of a particular country pose immigration and/or security risks, and the immigration track record of visitors from that country. The criteria are objective and are applied impartially. Where the risk factors are similar, visas are granted on similar terms, without regard to such things as the race or colour of the applicants.

104. A commentator has asked us to explain our policy on the admission of stateless persons. The position is as follows:

(a) Stateless persons must hold valid visas to enter or to transit Hong Kong;

(b) A stateless person who wishes to enter Hong Kong must possess a valid travel document bearing a visa for the HKSAR. The travel document should be valid for at least two months beyond the proposed period of stay.

(ii) Freedom to leave the territory

105. Article 31 of the Basic Law provides that Hong Kong residents shall have freedom to travel and to enter or leave the region. All Hong Kong residents are free to leave the territory unless under lawful arrest or detention or injunction of a court. Permanent residents of Hong Kong have the absolute right to return to Hong Kong. The right is not dependent on race, colour or national or ethnic origin.

(iii) Right to residency/right of abode

106. Article 24 of the Basic Law provides that permanent residents of the HKSAR shall have the right of abode in the HKSAR and shall be qualified to obtain, in accordance with the laws of the region, permanent identity cards which state their right of abode. Under article 24 (2) of the Basic Law, there are six categories of permanent residents of the HKSAR who enjoy right of abode. The six categories are defined in detail in paragraph 2 of Schedule 1 to the Immigration Ordinance (chap. 115) (annex 8). They provide a means for persons of all races and origins to become permanent residents and thus to obtain the right of abode.

107. The cases of Cheung Lai-wah and Chan Kam-nga. These cases entailed complex issues and have been the subject of much controversy. We informed the Human Rights Committee of the background and developments, first in our report under the ICCPR (paragraphs 239 to 246, in relation to article 12 of that Covenant) and in the supplementary information that we provided to the Committee immediately before its hearing (on 1 and 2 November 1999) of that report. Because the facts are complex, we have reproduced that information - with some necessary editing - at annex 9.

108. Commentators have said that the Government's actions in those cases were racially discriminatory. Some have gone so far as to assert that those actions were part of a government campaign to inflame the prejudices of Hong Kong residents against Mainlanders. The assertion is without foundation. Hong Kong has had a long tradition of absorbing migrants from Mainland China. Indeed, the Mainland is our principal source of migrants for permanent settlement.

109. Hong Kong is one of the most densely populated places in the world with nearly 6,000 people per square kilometre. Nevertheless, every year, we admit about 54,000 new residents: an annual increase equivalent to a small European town. We have been able to do this because their entry has been sustained at a rate and a level that our social infrastructure can absorb.

110. But, in our view, the court's interpretation of two articles in the Basic Law effectively removed the mechanisms that enabled us to control the rate of entry and thus the growth rate of our permanent population. We estimated that, within a decade, the decision would entitle an extra 1.6 million Mainland-born people to enter Hong Kong to live, increasing our population by 26 per cent. This was equivalent in proportional terms to the United States admitting 68 million extra people or, say, France, another 15 million, in just 10 years. In Hong Kong - where reclamation is the principal method of land formation due to our difficult, hilly terrain - meeting the needs of such a large and sudden influx of people for housing, schools, hospitals, transport and social services would have entailed the need to create the equivalent of 30 years' land supply in a single decade. And the costs would have had to be met at the expense of plans to improve

the living standards of our present population of 6.8 million. In the context of these constraints, we consider that our migration policy is a generous one. The controls that we impose on it are necessary and proportionate to the very practical difficulties that they are designed to address.

111. In 1999, two illegal immigrants from the Mainland were repatriated while legal proceedings regarding their claim to right of abode were in progress. We addressed the matter at length in the supplementary information provided to the Human Rights Committee - prior to the hearing of our report under the ICCPR - in relation to article 12 of that Covenant. But, in the course of the consultations in relation to the present report, it was asserted that the incident was an instance of racial discrimination on the part of the HKSAR Government. We do not consider it to be so and believe that the case had, at most, only a peripheral bearing on the implementation of the Convention in Hong Kong. However, to enable the Committee conveniently to assess the matter for itself, we reproduce at annex 10, with some necessary editing, the explanation that we supplied to the Human Rights Committee.

112. Admission of different categories of persons from Mainland China. Commentators have asserted that the recently announced policy of encouraging talented persons from Mainland China[21] to work in Hong Kong is prejudicial to those wishing to enter Hong Kong for family reunion. The proposal is to permit the entry of Mainland residents with skills and talents not readily available in Hong Kong. Essentially, their position will be the same as that of expatriates from other countries. That is, they enter Hong Kong to work, not to settle. They will have to meet stringent skills and qualification requirements before their application for entry into Hong Kong is approved. They will have to renew their work visas at staggered intervals (the same that apply to "expatriates") and will acquire the right of abode only if they complete seven years of ordinary residence here. They will not be counted against the 150 daily quota of persons entering for permanent settlement.

113. The position of those waiting to enter Hong Kong for family reunion is completely different and will remain as it is now. That is, they will - as now - continue mainly to comprise persons entering to join immediate family members, including persons who are eligible for the right of abode under the provisions of article 24 of the Basic Law and who therefore have the right of abode from the outset. As now, their skills, or lack of them, will in no way impinge on their eligibility.

114. Issues of concern to other non-local communities. Representatives of the Nepalese community have said that:

(a) The Basic Law does not protect the right of abode of Nepalese children born in Hong Kong. This is not so. Article 24 (2) of the Basic Law provides two avenues for non-Chinese children who are born in Hong Kong to obtain the right of abode. Article 24 (2) (4) provides for non-Chinese nationals (who have entered on valid travel documents) to obtain the right of abode by virtue of seven years' continuous ordinary residence in the HKSAR and by taking Hong Kong as their place of permanent residence. Article 24 (2) (5) provides that non-Chinese nationals under 21 years of age born in Hong Kong of those residents listed in article 24 (2) (4), before or after the establishment of the HKSAR, shall have the right of abode in Hong Kong. Thus, Nepalese children born in Hong Kong have the right of abode if either of their parents satisfies article 24 (2) (4) and they themselves satisfy article 24 (2) (5). Schedule 1

to the Immigration Ordinance[22] gives effect to article 24 (2) of the Basic Law. The Schedule prescribes the categories of persons who are permanent residents of the HKSAR and who thus enjoy the right of abode in accordance with article 24 (2) and (3) of the Basic Law. Paragraph 6 of the Schedule provides that - subject to their meeting the conditions in subparagraphs (1) (a) to (c) of paragraph 6[23] - persons who are not of Chinese nationality, and who were permanent residents of Hong Kong before 1 July 1997 will retain their status as permanent residents and the right of abode in the HKSAR;

(b) Chinese residents automatically have the right to Chinese citizenship and to HKSAR passports while the rights of non-Chinese residents in this respect are limited. Article 4 of the Nationality Law of the People's Republic of China - which applies to the HKSAR in accordance with article 18 of the Basic Law - provides that any person born in China whose parents are both Chinese nationals or one of whose parents is a Chinese national shall have Chinese nationality. Article 7 of that Law provides that foreign nationals or stateless persons who are willing to abide by China's Constitution and laws and who meet one of the following conditions may be naturalized upon approval of their applications:

(i) They are near relatives of Chinese nationals;

(ii) They have settled in China; or

(iii) They have other legitimate reasons.

Non-Chinese permanent residents of the HKSAR who wish to obtain HKSAR passports must be naturalized as Chinese nationals - and renounce any foreign nationality that they hold - in accordance with this provision;

(c) Nepalese applicants for permanent residency and dependent status have been awaiting the decision of the Immigration Department for over a year. In some cases, they say applicants' sponsors cannot demonstrate their ability to support the applicants. This is because they work in trades (such as construction) where employers are not prepared, our respondents say, to supply the requisite certifications of employment and proof of income. Applicants for entry as dependants are not permitted to work in Hong Kong, obliging them to return to Nepal pending approval or rejection of their applications. This, our respondents say, has the effect of keeping families apart, in violation of article 37 of the Basic Law, which guarantees the right to raise a family. There are several points here:

(i) Delays: applications for permanent residency can only be processed when all the necessary documentary proofs are available and/or on completion of verification process with the authorities in Nepal. The instances complained of were isolated cases that arose from special circumstances;

(ii) The applicants for dependent visas: as explained in paragraph 100 (a) above, foreigners wishing to work and/or settle in the HKSAR are normally expected to apply for the appropriate visa before coming to

Hong Kong. It is an abuse of the system to enter as a visitor with the premeditated intention of subsequently applying for change of status. Applications for dependant status are granted only to genuine dependants who can rely on their sponsors for accommodation and financial support. Dependant visas are not granted to enable applicants to look for work and so to bypass our policy in regard to the employment of overseas personnel. Those policies apply to all foreign nationals and in no way discriminate against persons from Nepal;

(iii) Right to raise a family: it is true that article 37 of the Basic Law guarantees the right to raise a family freely. Indeed, the right to found a family and the protection of the family are also recognized under article 23 of the ICCPR. But the allegation that the policy violates article 37 of the Basic Law is unfounded. In Santosh Thewe v. The Director of Immigration,[24] the Court held that article 37 did not stand on its own and could not be considered in a vacuum. Rather, it had to be read in connection with article 39 which permits restrictions on the fundamental rights and freedoms guaranteed provided that those restrictions were provided by law and were compatible with various international instruments, including the ICCPR. A reservation under the ICCPR had been entered in respect of Hong Kong, reserving the right to continue to apply such immigration legislation governing entry into, stay in and departure from Hong Kong as regards persons not having the right under the law of Hong Kong to enter and remain in Hong Kong. Section 11 of the BORO makes a similar provision. The Nepalese applicants in question are persons who do not have the right to enter and remain in Hong Kong. Therefore, applications by them for dependant status are subject to the exercise of the Director of Immigration's discretion under section 11 of the Immigration Ordinance. The exercise of that discretion takes no account of an applicant's race, colour, national or ethnic origin. This view received support in the decision in Malik Azmat Sherazi v. The Director of Immigration.[25] The Court held that the exercise of a discretion to allow a change of status was purely an administrative decision. An alien visitor who came to Hong Kong as a visitor and was allowed to land with a limit of stay had no legitimate expectation to be granted residence right in Hong Kong. The Court further held that:

> "as part of the immigration policy, it is perfectly legitimate and reasonable for the Director to insist that any applicant for change of status from a visitor to a dependant has to satisfy him that his primary purpose is to come to Hong Kong to join his sponsor and that he will have a living standard well above subsistence level and will not be a burden to the society."

A similar view was taken by the Court of Appeal of the HKSAR in Xie Xiaoyi v. The Director of Immigration[26] where it was held that:

> "The Government is not obliged under the Covenants [including article 17 and article 23 of the ICCPR] to unite families which are spilt or to allow those with no right of abode to enter to establish a family. The relevant provisions of the Covenants or the Convention do not protect those who have no established family life here and those who have no right to enter."

(iv) Right to marriage

115. Article 19 of the BOR - which gives effect in domestic law to article 23 of the ICCPR - provides, inter alia, that the right of men and women of marriageable age to marry and to found a family shall be recognized. And no marriage shall be entered into without the free and full consent of the intending spouses. The right is without distinction as to race, colour or national or ethnic origin. Marriage between persons of different ethnic origin is common and well accepted in the HKSAR.

116. Related to the right to marriage is the right - guaranteed under article 37 of the Basic Law and article 23 of the ICCPR - to raise a family. Professionals from developed countries ("expatriates") are allowed to bring their families to Hong Kong. Foreign domestic helpers are not (nor are imported workers). Commentators consider this discriminatory.

117. There are sound, practical reasons for this distinction. Expatriates may bring their families (and, indeed, are themselves admitted) on the strict condition that they will not impose a burden on Hong Kong's resources and services. They are responsible for their families' accommodation and other needs while in the territory. But foreign domestic helpers are specifically hired to work and live in their employers' homes. Most families in Hong Kong live in small flats, few of which can accommodate more than one additional person. The physical constraints make it practically impossible to allow helpers to bring their families, though family members have always been able to visit them in Hong Kong. And, given the sheer number of foreign domestic helpers in Hong Kong, allowing their family members to accompany them would impose excessive demands on our economic and social infrastructure.

118. We do not consider that the policy is racially discriminatory. Professionals and entrepreneurs from all the "source countries" for migrant workers live and work in Hong Kong on precisely the same basis as do those from the "developed" nations.

(v) and (vi) Right to own property and inherit

119. Article 105 of the Basic Law provides that the HKSAR shall, in accordance with law, protect the right of individuals and legal persons to the acquisition, use, disposal and inheritance of property and their right to compensation for lawful deprivation of their property. The rights in paragraphs 5 (d) (v) and (vi) are also secured by both statute and common law. They - and the laws that enforce them - are applied without discrimination as to race, colour, or national or ethnic origin.

(vii) Freedom of thought, conscience and religion

120. Article 32 of the Basic Law provides that Hong Kong residents shall have freedom of conscience, freedom of religious belief and freedom to preach and to conduct and participate in religious activities in public. Under article 41 of the Basic Law, persons in Hong Kong other than Hong Kong residents shall also enjoy such freedoms. Freedom of thought, conscience and religion is also guaranteed by article 15 of the BOR, which gives effect in domestic law to article 18 of the ICCPR. Pursuant to article 1 of the BOR, these freedoms shall be enjoyed by all residents regardless of race, colour, or national origin or other status.

121. The concern has been expressed that the religious freedom of minorities is under threat and that the threat was a manifestation of racial discrimination. This concern arose from a long-standing dispute over proposals to build a mosque in Fanling, in the New Territories. This had been strongly resisted by the residents of a housing estate bordering the site of the proposed mosque.

122. The residents say that they do not object to the construction of a mosque on racial or religious grounds. Rather, their concern is its proximity to their estate and the likelihood that its presence there would increase both pedestrian flow within the estate and the burden on public transport. They would, they say, have objected on these grounds to the construction of a religious establishment (such as a Buddhist or Taoist temple) patronized mainly or exclusively by Chinese worshippers. Against this background, we do not consider that the dispute over the proposed mosque is indicative of either religious or racial discrimination. As at the time of drafting this report, the Planning and Lands Departments were considering alternative sites.

(viii) Freedom of expression

123. The freedom of expression is constitutionally enshrined in article 27 of the Basic Law, which states that Hong Kong residents shall have freedom of speech, of the press and of publication. Persons in Hong Kong other than Hong Kong residents enjoy this freedom by virtue of article 41 of the Basic Law.

124. The freedom of expression is also safeguarded by article 16 of the BOR. And, as we have stated, article 1 of the BOR provides that the rights recognized in the BOR shall be enjoyed without distinction of any kind, such as race, colour, or national or social origin.

(ix) Freedom of peaceful assembly and association

125. Article 27 of the Basic Law provides, among other things, for the freedoms of association and assembly. These rights are specifically secured by articles 17 and 18 of the BOR, which give effect in domestic law to articles 21 and 22 of the ICCPR. Again, they are enjoyed without discrimination as to race, colour, or national origin or other status.

(x) Rights of persons deprived of their liberty

126. This right (which derives from article 10 of the ICCPR) is not among the civil rights cited under article 5 (d) of the Convention. We include discussion of it here because commentators have expressed concerns about members of the ethnic minorities detained in Hong Kong prisons or detention centres. The concerns are that:

(a) At least some of these prisoners suffer from cultural disorientation and alienation, effectively compounding the punishment imposed on them by the courts. Persons in this predicament should be permitted to serve out their sentences in their home countries. But existing arrangements only permit that in respect of a relatively small number of developed countries. This discriminates against prisoners from developing countries;

(b) Others, detained for entering Hong Kong illegally, are often held indefinitely because they lack the documentary proof necessary for their repatriation;

(c) Reading materials provided for prisoners are in English and Chinese only. As a minimum, information on complaints channels and procedures and on prisoners' rights should be provided in various languages. Prison staff should be given basic training in the relevant languages; and

(d) Prison staff frequently subject non-Chinese prisoners - particularly those from sub-Saharan Africa - to racist abuse.

These complaints received considerable media attention when, in 1999, a Nigerian prisoner suffered fatal burns after he had set fire to his cell in protest against alleged mistreatment.

127. Taking these observations seriatim:

(a) Cultural disorientation of prisoners:

(i) Orientation. All newly admitted prisoners - irrespective of their race, colour, or nationality - undergo an induction programme to ensure that they are informed of their rights, prison rules and procedures, complaint channels, and so forth. Prisoner Welfare Officers provide "pastoral" care and clinical psychologists provide counselling where that is needed. Foreign prisoners also receive visits from their consulates;

(ii) Transfer of sentenced persons to their home countries. We recognize that such transfers are conducive to rehabilitation and it is our policy to facilitate them. There is statutory provision for this under the Transfer of Sentenced Persons Ordinance (chap. 513) and we aim to establish a network of bilateral agreements with other jurisdictions. To date, we have signed agreements with Italy, Sri Lanka, the United Kingdom and the United States of America. And we have concluded negotiations with France, the Philippines, Portugal and Thailand. Negotiations with more than 30 other jurisdictions are under way. These include many developing

countries, such as India and Bangladesh, that have a sizeable number of nationals serving sentences in Hong Kong. We are also seeking to establish contact - and to enter negotiations - with other jurisdictions. Transfers are possible in the absence of such agreements. But each application must be processed on an ad hoc basis. Such arrangements are time consuming and complex and, in our experience, few jurisdictions are interested in them. Prisoner transfer arrangements were first introduced in Hong Kong in 1989. Since then, there have been 26 outward transfers and 54 inward. Twenty inward applications and 37 outward were in process at the time of finalizing this report;

(b) Repatriation of detained persons. Detention is not arbitrary in Hong Kong and there are strong legal safeguards to protect the liberty of the person. Article 28 of the Basic Law guarantees - inter alia - that "the freedom of the person of Hong Kong residents shall be inviolable. No Hong Kong resident shall be subjected to arbitrary or unlawful arrest, detention or imprisonment ..." Against this background, our policy in relation to detention seeks to balance the maintenance of Hong Kong's security with the natural desire of detained persons to be at liberty. Relevant factors include the progress - and outcome - of inquiries concerning them, whether they are likely to abscond if released (recognizance is considered as an alternative to detention), and whether they pose a security hazard to society. At the same time, however, it is the duty of the Director of Immigration to effect the removal of detained persons within a reasonable period of time, having regard to all the circumstances affecting their detention. But delays can occur. Common factors are the time required to obtain information from the responding foreign authorities and the fact that detained persons sometimes provide false information as to their places of origin. Decisions to continue detention are regularly reviewed to ensure that the detention period is in conformity with the relevant provisions of the Immigration Ordinance. Those provisions are explained in annex 11. And persons who consider that they have been detained without lawful jurisdiction - or others acting on their behalf - have the right to apply to the courts for a writ of habeas corpus. The length of time taken to effect removal or deportation is subject to close scrutiny by the court whenever detention is so challenged;

(c) Reading materials. Materials are provided in Chinese and English and these meet the needs of the vast majority of Hong Kong's penal population. Interpretation services are provided for prisoners who do not understand either language. Officers are encouraged to learn other languages, including sign language, to facilitate better communication with prisoners. And their professional training enables them to communicate with prisoners, irrespective of the languages they speak. Clearly, it would be impractical to expect the prisons to provide materials in every language that prisoners might speak. But books and other reading materials can be provided by visiting friends, relatives, consulates, or charities, provided that such materials are not detrimental to the rehabilitation process and do not encourage the commission of offences; and

(d) Racist abuse by prison staff of non-Chinese prisoners - particularly those from sub-Saharan Africa. All prisoners are accorded the same treatment, irrespective of their race, nationality, culture or origin. But special dietary regimes are available for prisoners from different cultures. The religious needs of prisoners are also taken into consideration in the

assignment of work. For example, Prison Rule 41 stipulates that Jewish prisoners shall not be compelled to work on Saturdays if they claim exemption. Prison Rule 45 provides that Muslim prisoners shall be allowed to observe the fast of Ramadan. During the fast, their workload shall be reduced as the Medical Officer considers proper.

Article 5 (e). Economic, social and cultural rights

(i) Employment rights

128. Article 33 of the Basic Law provides that residents of the HKSAR shall have freedom of choice of occupation. Article 4 of the BOR also provides that no one shall be required to perform forced or compulsory labour. The right to work and the right to enjoy just and favourable conditions of work are discussed in paragraphs 41 to 117 of our report under the ICESCR, in relation to articles 6 and 7 of that Covenant.[27] Those paragraphs describe in detail the protections afforded under the principal statutes, particularly the Employment Ordinance (chap. 57), the Occupational Safety and Health Ordinance (chap. 509), the Factories and Industrial Undertakings Ordinance (chap. 59), and the Employees' Compensations Ordinance (chap. 282). These laws provide for the protection of employment rights, benefits and welfare without distinction as to race, colour, or national or ethnic origin. Where disputes on employment rights and benefits arise, private sector employees - without distinction as to race, colour, or national or ethnic origin - can ask the Labour Department to help them reach a settlement. Employees also have ready access to the judicial bodies for the adjudication of claims.

129. With a view to our obligations under the Convention and the two Covenants, the Labour Department scrutinizes all vacancy orders that it receives from employers to ensure that they contain no discriminatory requirements, such as restrictions on race, sex, or age. And in 1998, as we have explained in paragraph 25 in relation to article 2, we issued a "Code of Practice against Discrimination in Employment on the Ground of Race" to encourage employers to apply consistent criteria throughout the employment process.

Foreign domestic helpers[28]

130. As at 31 December 1999, some 193,700 people - mostly women - were working in Hong Kong as foreign domestic helpers. Most were from the Philippines (about 143,150, or 73.9 per cent), 21.4 per cent (about 41,450) from Indonesia and 3 per cent (about 5,800) from Thailand. Most of the remaining 1.7 per cent (about 3,300) were from South Asia.

131. Employers of foreign domestic helpers are required to pay a minimum allowable wage, currently HK$ 3,670 a month. This is set at a level broadly comparable with the current market rate for local workers with similar duties. One purpose of this "minimum allowable wage" is to protect a particularly vulnerable category of workers from exploitation. Another is to ensure that local workers are not undercut by foreign labour. Employers must also provide free accommodation and food, free medical treatment and return passage to the helpers' place of origin upon expiry or termination of employment contracts. Helpers enjoy the same rights to statutory holidays and weekly rest as do other people (see note 29). Like other imported

workers, foreign domestic helpers are informed of their legal and contractual rights and obligations through the inquiry service and publicity measures of the Labour Department and the Immigration Department.

132. The minimum allowable wage is reviewed annually, taking into account the prevailing economic situation, household income, per capita GDP and wage movements for local workers in Hong Kong. In February 1999, on the basis of our findings, we announced that the wage should be reduced by 5 per cent, from $3,860 a month to $3,670. In January 2000, we further announced that it should be frozen at its existing level.

133. We do not share the view, expressed by some commentators, that the reduction in 1999 was discriminatory. The level of this wage is reviewed annually in the light of the wage movements in comparable sectors and the situation in the local economy. The minimum allowable wage is precisely that: a minimum. Employers can, if they wish, pay more. Additionally, as stated above, foreign domestic helpers enjoy contractual benefits - such as free food, medical treatment and accommodation - that other workers may have to meet from their own resources. The 1999 reduction was imposed in the context of an economic recession. The wages and salaries of many local workers have been similarly reduced or frozen.

134. Certain proposals in relation to foreign domestic helpers have engendered considerable public debate. These proposals concerned:

(a) A surcharge of 20 per cent on the wages of foreign domestic helpers to pay for the cost of street cleaning after their Sunday gatherings:[29] this is not a government proposal. It was put forward by a Legislative Councillor in the context of the 2000/01 budget consultation exercise. The Financial Secretary announced the 2000/01 budget in early March 2000: the proposal was not adopted;

(b) Driving duties to be prohibited: some employers require their domestic helpers to use the family car for essentially domestic tasks such as shopping and taking their children to school. While full-time chauffeuring is a discrete occupation, the practice has been permitted provided that such duties comprise only part of a helper's more specifically domestic duties. However, with the economic downturn, trade unions have argued that the practice denies employment opportunities to local drivers and have demanded that the Government prohibit it. The Government has given this consideration and - at the time of finalizing this report - had yet to reach a firm conclusion. In the course of its deliberations, it has taken full account of the views put forward by the trade unions, employers of domestic helpers and, of course, representatives of the helpers themselves. Some of our respondents have said that the proposal is an indication of the vulnerability of migrant workers and a sign of the retrogressive labour practices in Hong Kong. This view will also be taken into account;[30] and

(c) Maternity protections: in 1999, the Labour Department completed a review of the application of the Employment Ordinance to live-in domestic helpers, local and foreign alike. The object was to establish whether there was a need for special arrangements to regulate their employment. On the basis of that review, the Department proposed that:

(i) All the provisions under the Employment Ordinance, including those on maternity protection, should continue to apply to live-in domestic helpers; but

(ii) In view of their unique employment circumstances, live-in domestic helpers who become pregnant, and their employers, should have the flexibility to mutually agree to dissolve the contract of employment. Should they so agree, the employer would, it was proposed, have to pay the helper a specified amount of compensation. Helpers who did not so agree would continue to enjoy the existing maternity benefits provided for by law, including legal protections against dismissal.

The concern has been expressed that the proposal is discriminatory. We do not share that perception. The changes that it would entail - if endorsed - would apply equally to both local and foreign live-in domestic helpers. Its purpose is to address the practical difficulties that pregnancy can entail in the unique circumstances of employer and employee sharing the same living space. And, in our view, the proposed flexibility would ensure that the arrangements were proportionate to the difficulty that they are intended to resolve. We have consulted interested parties such as groups representing employees, employers' associations and relevant consulates and have received a variety of views. We will examine these views carefully before considering the way forward.

135. Imported workers.[31] Imported workers entering the HKSAR for employment under the Supplementary Labour Scheme (SLS)[32] do so on terms prescribed by the Government with the dual aim of preventing their exploitation and of protecting the employment opportunities of local workers. In filling job vacancies, Hong Kong employers must give first priority to local applicants. Employers who can demonstrate that they have diligently sought to recruit Hong Kong workers but have been unable to do so (for example, having unsuccessfully advertised the vacancies for a prescribed period) may apply for permission to import workers under the SLS. The SLS seeks to regulate the number of imported workers but not the origin/nationality of these workers.

136. As at 31 December 1999, some 2,557 persons were working in Hong Kong under the SLS. Most were employed on two-year contracts. They are informed of their legal and contractual rights and benefits through pamphlets, briefings, and a telephone inquiry service with pre-recorded messages in five dialects/languages. Their employers are required to pay them wages at a rate comparable to local workers in similar positions, to provide them with free medical treatment, subsidized accommodation of a prescribed standard and return passage to their places of origin.

137. Legal protections. Imported workers and foreign domestic helpers enjoy the same rights and benefits under labour legislation as local workers (see annex 6). And they enjoy the same access to the Labour Department's conciliation services in the event of disputes relating to employment rights and benefits. Like local workers, they have ready access to the Minor Employment Claims Adjudication Board or the Labour Tribunal (depending on the amount of the claim and the number of claimants involved) for adjudication of claims under the

Employment Ordinance or their employment contracts if conciliation is unsuccessful. The Labour Department also assists injured workers or dependants of deceased workers to pursue outstanding payments of employees' compensation.

138. Promotion and publicity of employment rights and benefits. The Labour Department issues publicity materials informing imported workers of their statutory and contractual rights and benefits. It also maintains a telephone inquiry service for that purpose in five dialects/languages. The Department also conducts briefings for all imported workers within eight weeks of their arrival, advising them of their employment rights and obligations and of the channels available to them for inquiries and complaints.

139. Foreign domestic helpers have access to information about their legal and contractual rights through a Government-maintained inquiry service. The Immigration Department issues pamphlets and leaflets to all helpers when they apply for their identity cards.[33] These are published in seven[34] languages.

140. Enforcement. Commentators have said that the statutory provisions are not adequately enforced and that this exposes foreign workers to exploitation and abuse. But as explained in paragraph 30 above in relation to article 2, government departments - particularly the Labour Department - vigorously enforce the employment rights and benefits of imported workers. Regular inspections are made of the places where they live and work to establish whether they are provided with all their legal and contractual entitlements. A 24-hour hotline provides a convenient vehicle for complaints to the Government. Unscrupulous employers may be prosecuted and/or subject to administrative sanctions. Such sanctions may include withdrawal of approval for importing labour and prohibition from future participation in the labour importation schemes. The Labour Department also investigates complaints against employers of foreign domestic helpers. Where infringements of statutory or employment terms are discovered, the Department will initiate prosecutions.

141. Foreign domestic helpers and imported workers come to Hong Kong to do specific jobs for specific employers. If they wish to take up other jobs in the territory - either for the same employers or for new ones - they must first complete or terminate their existing contracts, then return to their countries of origin and apply afresh for working visas. Commentators consider this requirement to be discriminatory because it does not apply to managerial and professional workers who mostly come from the developed nations.

142. The requirement exists to safeguard the interests of local workers, particularly the unskilled, semi-skilled and artisans. The concern is that were foreign domestic helpers and/or migrant workers able to change jobs at will and remain in Hong Kong indefinitely, they would compete with - and "undercut" - such workers for jobs. Some might, of course, seek to compete for managerial/professional employment. But that is subject to other immigration tests that applicants are expected to satisfy before entering Hong Kong. It is not acceptable for persons to exploit permission to enter for one employment under one category as a convenient "stepping-stone" to another. Thus, persons wishing to change categories must return to their countries of origin and reapply from there. Or they should apply under the other category ab initio. The requirement does not apply to managerial or professional personnel because in their case - for the reasons in paragraph 28 (a) above, in relation to article 2 of the Convention -

the concerns that it is designed to address do not arise. It is imposed without discrimination on the ground of race, colour, or ethnic, or national origin: managers and professionals come from all nations, including the home countries of foreign domestic helpers and imported workers.

143. But commentators have not confined their concerns in regard to the right to work to the situation of imported workers and foreign domestic helpers. They have also said that:

(a) Private sector employers discriminate against members of the South Asian community, both at the application stage and in the workplace; many have had to accept less attractive employment conditions than do their Chinese counterparts with the same, or even lower, qualifications: without knowledge of what has actually transpired in specific cases, it is not possible for the Government, as an outside party to the events, to judge whether discrimination has or has not occurred and, if so, whether such discrimination is unusual or commonplace. But we can say with certainty that in Hong Kong's commercial sector, knowledge of written and spoken Chinese has become an increasingly important qualification. Employers, particularly those whose principal business is trade with the Mainland, will naturally regard that qualification as more than simply an asset. And, in many circumstances, an applicant who does not possess it will not be regarded as being equally qualified with one who does with regard to recruitment, promotion, training and posting. Having said that, however, our Code of Practice Against Discrimination in Employment on the Ground of Race encourages employers to apply consistent (and non-discriminatory) criteria at all phases of the employment process;

(b) Not all publicly funded bodies and Government contractors follow its Code of Practice; the Government should require them to do so: universities and other organizations receiving government subvention/subsidies are required to comply with the Code. Indeed, some have appointed equal opportunities officers to handle the publicity and "enforcement" in this area. We agree in principle that government contractors should also abide by the Code. But we have practical reservations as to how contracts should reflect those provisions and how the Government might monitor and enforce them;

(c) Job advertisements, particularly those for teachers of English, often indicate requirements or preferences in regard to applicants' race; this implies that persons of non-Caucasian origin will not be able to apply for such posts even if they hold the requisite qualifications: in the course of the "Study on Discrimination on the Ground of Race" - conducted in 1996 - we examined advertisements for over 28,000 vacancies in a selection of both Chinese and English newspapers. We published the findings in the consultation paper that we copied to the Committee at its examination of the fourteenth report in March 1997. But we reproduce them at annex 12 both for ease of reference and because they remain pertinent in the context of the concerns expressed by our respondents. Essentially, our assessment was that just 128 (0.5 per cent) advertisements of those in the English language papers and 30 (0.1 per cent) of those in the Chinese ones contained possible indications of racial discrimination. We concluded that:

> "A very small percentage of the advertisements examined contained possible indications of racial discrimination. But it must be borne in mind that some of those assessed as possibly discriminatory may have reflected genuine occupational requirements. And it

must be emphasized that most advertisements were not overtly discriminatory. It is, of course, possible that employers discriminate at later stages of the selection process. But there is no simple way of investigating that possibility."

We have not re-run the survey but have no reason to believe that the position has significantly changed. We accept that discriminatory advertisements are offensive and - in our Code of Practice - we specifically discourage it. But the matter needs to be kept in perspective. The number of such advertisements discovered by the 1996 survey was negligible and, in practical terms, indicated that over 99 per cent of all vacancies covered by the survey were advertised on a non-discriminatory basis;

(d) South Asian residents who cannot read, write or speak Chinese find it difficult to secure jobs. The Government should help them to do so: Hong Kong is a free labour market in which all must compete for positions commensurate with their qualifications, skills, and experience. The Government does not intervene in this process. But it must be recognized that there are relatively few forms of employment that do not entail communication and that, as we have indicated in (a) above, the ability to speak, read and write a language is itself an important skill. This is particularly so of the language of the community in which a person lives and, in Hong Kong, Chinese is the first language of over 96 per cent of the population. Our economy is based on trade and services. And, with Mainland China being our largest single trading partner, it is to be expected that employers will increasingly require applicants to be able to speak, read and write Chinese. Persons competing in the mainstream of the job market must accept that requirement as a fact of life. Nevertheless, there are numerous opportunities for persons who do not have a command of Chinese to prosper in Hong Kong. A large and flourishing section of the restaurant industry (and related trades) is owned and run by members of the ethnic minorities who employ both their own and other minority groups. And, for example, the insurance and banking sectors - with their strong connections with markets overseas - often require candidates to be competent in English (or other relevant languages) and, of course, possess the skills pertinent to specific vacancies. But the fact remains that without a thorough command of Chinese, applicants cannot expect to compete on equal terms for many of the jobs that are available. That is a matter of qualifications, not of discrimination.

144. Common terms of appointment and conditions of civil service. Historically, local and overseas officers were employed on different terms and conditions of service. But in present day circumstances, the need to do so has greatly diminished. Accordingly, in January 1999, we introduced common terms and conditions for all appointees so that now all civil service recruits are appointed on the same terms and conditions regardless of their origin.

(ii) Right to form and join trade unions

145. The right of HKSAR residents to form and join trade unions is guaranteed by article 27 of the Basic Law and article 18 of the BOR. Paragraphs 118 to 132 of our report under the ICESCR, in relation to article 8 of that Covenant, contain a full discussion of the implementation of this right in Hong Kong. The right is enjoyed without distinction as to race, nationality, or place of origin. Several of our registered trade unions specifically represent the rights of overseas workers. Examples include the Bontoc (Filipino) Domestic Workers Union, Hong Kong; the Philippines Domestic Workers Union; and the Indonesian Migrant Workers Union.

(iii) Right to housing

146. The objective of our housing policy is to ensure better housing for all by helping all households gain access to adequate and affordable housing and encouraging home ownership in the community. The right to subsidized housing is based on an applicant's housing need (which is assessed by making reference to the applicant's household income, assets, property ownership and the residence period in Hong Kong) and is enjoyed without distinction as to race, colour, national or ethnic origin.

147. Commentators have said that private landlords frequently refuse to let their premises to members of the ethnic minorities, particularly those from South Asia. They consider that this practice should be made illegal. We do not deny that members of the ethnic minorities may sometimes be subjected to such treatment. But we think it likely that many - perhaps most - occurrences of this nature reflect prospective landlords' fear of communication problems with tenants with whose background and customs they may be unfamiliar or about whom they may be misinformed. For this reason, one of the key aims of our public education programme is precisely to address concerns of this kind. We have strong reservations as to the appropriateness of using the law to coerce private citizens as to the disposal of their personal property.

148. Housing needs of new arrivals. The Government's policy is to assist all households to have access to adequate and affordable housing. To that end, our projections of overall flat production take account of the housing needs of new arrivals. And the Government's Housing Information Centres operate outreach and other services to help new arrivals apply for public housing.

149. The allocation of public rental housing is subject to criteria that all applicants must meet, irrespective of their race, colour, national or ethnic origin. One such criterion is that 50 per cent of an applicant's household members must have lived in Hong Kong for seven years.[35] Some commentators have said that this policy discriminates against new arrivals who, they say, are obliged by financial circumstances to live in substandard private sector housing. But the policy is necessary because, in Hong Kong, public housing resources are scarce in relation to demand. We consider it fair and reasonable that longer-term residents should enjoy priority in the allocation of public rental housing. Nevertheless, the system also embodies the necessary flexibility to meet the needs of persons with urgent claims to immediate compassionate rehousing in public rental flats.[36]

(iv) Right to receive medical care, social security and social services

150. The right to receive medical care, social security and social services is enjoyed without distinction as to race, colour or national or ethnic origin. Article 36 of the Basic Law provides that Hong Kong residents shall have the right to social welfare in accordance with law. And article 145 provides that the HKSAR Government shall formulate policies on the development and improvement of the previous (pre-reunification) social welfare system "in the light of the economic conditions and social needs".

151. Accordingly, our social security policy is to meet the basic and special needs of Hong Kong's disadvantaged people. These include such people as the financially vulnerable, the elderly and the severely disabled. All local residents - irrespective of their sex, race or religion - enjoy the right to social security. This is achieved through the Comprehensive Social Security Assistance (CSSA) Scheme which provides comprehensive social security on an entirely non-contributory basis.

152. Generally, a person must have resided in Hong Kong for at least one year in order to be eligible for CSSA. Commentators have said that, in some cases, this policy has had the effect of preventing the children of new arrivals from attending school. This is because their parents cannot afford to pay for such things as transport, books and other fees. "Other fees" include such things as the charges that some schools impose to pay for air-conditioning.

153. The Director of Social Welfare may, at his/her discretion, grant assistance to applicants who do not satisfy the residence requirement. New arrivals from the Mainland and entrants from other places are granted assistance if they are in genuine hardship. The CSSA Scheme includes special grants to cover school-related expenses, including tuition, transport, books, air-conditioning charges and so forth. No child, however poor, is to be denied the right to education. We have asked the NGOs who raised this issue to draw the Social Welfare Department's attention to any case that may have slipped through the net.

154. In the course of the consultations prior to the drafting of this report, we were told that a hospital had refused to treat a foreign domestic helper on the ground that she was unemployed. We have not been provided with sufficient information to investigate the matter and cannot, therefore, comment on the particular case. But we can assure the Committee that, as we explained in paragraph 413 of our report under the ICESCR - in relation to article 12 of that Covenant - our policy is that no one should be prevented, through lack of means, from obtaining adequate medical treatment. All persons who hold valid Hong Kong identity cards have access - at very low cost - to public health services. Persons who do not hold valid Hong Kong identity cards also have access to those services. But - with the exception of accident and emergency services, which are free to all patients - they will be charged at higher rates, irrespective of their race, colour, or national or ethnic origin. Employment status is not a consideration in the provision of services. Public hospitals do not refuse treatment to foreign domestic helpers or anyone else on the ground that they are unemployed or, indeed, in any other circumstances.

(v) Right to education and training

155. These rights are enjoyed without discrimination on the grounds of race, colour, or national or ethnic origin. Primary and secondary schools provide education to all eligible children in Hong Kong irrespective of race, colour or national or ethnic origin. In May 1999, to ensure that the schools remained mindful of their role in ensuring equal opportunities for all students - and in fostering the concepts of equality and equity - the Education Department issued a circular on the "Elimination of All Forms of Discrimination". This was sent to all schools, reminding them of that role and of their duty to eliminate all forms of discrimination on grounds such as sex, class, race, disability, and so forth. But, noting that the circular focused more closely on gender equality than on other areas of potential discrimination, consideration is now being given to a follow-up placing greater emphasis on those other areas, particularly race.

156. Commentators have said that it is difficult for children from the ethnic minorities to secure school places and that the Government discriminates against non-Chinese children by "excluding them" from the scheme known as the "School-based support scheme".[37] But there is disagreement as to the nature of the difficulties facing those children when they enter school. For some, the principal concern is that in many cases, the children are not taught Chinese. This compromises their ability to compete on equal terms for tertiary schooling and, later, for jobs. But other commentators say that the reduction in the number of schools using English as the medium of instruction[38] has created learning difficulties for minority children in schools that have switched to Chinese.

157. Taking these concerns seriatim:

(a) Securing school places: all children aged between 6 and 15 must attend school and the Director of Education has the duty of ensuring that they do.[39] The Education Department meets all requests for school placement on a standard procedural basis. All children - including those from the ethnic minorities and new arrivals from Mainland China - are treated alike. The Department's District Education Offices provide advice or information on schools and on the education system, or policies on kindergarten, primary, and secondary education. Their offices are located throughout the territory, ensuring their ready accessibility. The services they provide are complemented by the Department's Central Placement Unit which has been in place since February 1996. The Unit's role is to help children who need such assistance to find school places. It coordinates and monitors the progress of each case and will intervene to assist where necessary. The Unit also keeps under review the supply and demand of school places and, if necessary, recommends the operation of additional classes. The Education Department has pledged to place eligible children in schools within 21 working days: that pledge has been faithfully fulfilled;

(b) Support services to newly arrived children not born in the Mainland: at present, the Education Department provides various tailor-made support programmes to expedite the integration of newly arrived Mainland children into the local education system. These include induction programmes, short-term full-time preparatory courses, and block grants to enable the schools involved to run school-based support programmes. We are planning to provide similar services to newly arrived children who were not born in the Mainland. These will incorporate new features such as support programmes to improve proficiency in Chinese;

(c) Opportunities to learn Chinese: all children, irrespective of their race, are eligible to study in any public sector school (most of which use Chinese as the medium of instruction) provided that they are either Hong Kong permanent residents or that their travel documents have one of the prescribed endorsements for permission to stay in Hong Kong (detailed eligibility criteria are at annex 14). Understandably, most non-Chinese children find it difficult to learn through the medium of Chinese - hence the proposed measures discussed in (b) above.

158. In this context, we think it relevant to mention that educational alternatives exist, both within and outside the public sector. For example, some public sector schools use English as the medium of instruction. And some of those that do so also offer the opportunity to learn the languages of Hong Kong's major minority groups such as Hindi or Urdu. Most of these schools also offer Chinese as either a compulsory or an optional subject. Additionally, several schools

offer non-local curricula at the primary and secondary levels. These are privately run but may nevertheless have access to public assistance. Under the current policy, if there is an established demand for school places for a particular non-local curriculum, international schools offering that curriculum may apply for land grants at nominal premium. They may also apply for interest-free loans of up to 100 per cent of the cost of building primary or secondary public sector schools of standard design. The amount is adjusted downward if a school's capacity is smaller than that of a local school. At present, 44 such schools offer a range of curricula such as those of the United States of America, Australia, Canada, England, France, Germany, Japan, the Republic of Korea, Singapore and so forth.

159. We acknowledge without reservation that article 13 of the ICESCR (which is constitutionally entrenched by virtue of article 39 of the Basic Law) requires Governments to provide free and compulsory primary education to all within their jurisdiction. But it does not require that they provide free education to the specifications of particular groups. Indeed, article 13, paragraph 3, of that Covenant makes it clear that the obligation is to respect the liberty of parents and legal guardians to choose for their children schools other than those established by the public authorities which conform to such minimum educational standards as may be laid down or approved by the State and their liberty to ensure the religious and moral education of their children in conformity with their own convictions. Article 13, paragraph 4, further prohibits interference with the liberty of individuals and bodies to establish and direct educational institutions. That is precisely the policy and practice in Hong Kong.

160. At the tertiary education level, the eight institutions funded by the University Grants Committee admit students on the basis of their performance in academic and non-academic areas, including sports, music, public services and so forth. These requirements are explained in the prospectuses issued by the institutions. Student admissions do not entail discrimination on grounds of race, colour, or national or ethnic origin. By way of illustration, the stated mission of the Open University of Hong Kong is "to make higher education available to all those aspiring to it regardless of previous qualification, gender or race". And section 4 (i) of the Post Secondary Colleges Ordinance (chap. 320) provides, inter alia, that - for a college to be registered under the Ordinance - students must be admitted "without favour being shown on grounds of race, nationality or religion".[40]

161. The Employees Retraining Board (ERB) offers retraining services and the Vocational Training Council (VTC) offers industrial training and vocational education to all eligible persons, irrespective of race, colour, or national or ethnic origin. One of our respondents said that Nepalese applicants for these courses had been advised that they were ineligible because they were not Chinese.

162. We believe that this complaint reflects a misunderstanding arising from the fact that applicants are sometimes expected to be able to communicate in Chinese - or more precisely, Cantonese - for enrolment in certain courses that are conducted in the language. The fact is that proficiency in Cantonese is essential to most jobs in the local labour market. That is why some courses are conducted in Cantonese, which is the first language of some 90 per cent of the population. This is particularly true of retraining courses that target unskilled applicants with limited educational background. In this context, we consider it relevant to add that the eligibility

criteria for retraining courses offered by the ERB and industrial training and vocational education courses offered by the VTC make no reference to race, colour, or national or ethnic origin.

(vi) Right to participate in cultural activities

163. The right to participate in cultural activities is guaranteed by article 15 of the ICESCR and therefore is constitutionally entrenched by virtue of article 39 of the Basic Law. The right is enjoyed without restriction as to race, colour, or national or ethnic origin.

Article 5 (f). Right of access to services

164. The effect of article 22 of the BOR is that all laws that regulate the right of access to any place or service intended for use by the general public, such as transport, hotels, restaurants, cafes, theatres and parks, must not be discriminatory either in their terms or in their practical application.

165. Commentators have cited two instances of purported discrimination in this area:

(a) Hotel charges for Japanese tourists. In 1997, there were reports that some hotels were charging Japanese tourists higher rates than they were charging other guests. The allegation was that the practice was racially discriminatory. Hong Kong is a free market economy where hotel rates are determined by market forces. Investigations into the allegations revealed that Hong Kong's hotel industry follows business practices that are globally accepted by the travel and hospitality industry. Essentially, hotel rates vary according to market conditions, season, volume of business and timing of contract. Different rates may be available in different markets at different times. Race, colour, or national or ethnic origin are not considerations; and

(b) Entry to drinking establishments. In 1997, a newspaper report drew attention to the fact that four establishments in the Wanchai area of Hong Kong Island (one of several centres of the entertainment industry) were charging South Asian (and sometimes Chinese) customers more than they were charging Caucasians. Investigation revealed that the practices reflected genuine commercial considerations and we remain unconvinced that racial discrimination was at issue.

Article 6. Provision of effective protection and remedies against any acts of racial discrimination

Interpretative declaration

166. In 1969 - when it extended the Convention to Hong Kong - the Government of the United Kingdom also so extended its interpretative declaration in respect of article 6. On 10 June 1997, the Government of the People's Republic of China issued a letter to the United Nations Secretary-General giving notification that the Convention would continue to apply to the HKSAR after 1 July 1997. In that letter, the Government of the People's Republic of China also made two declarations, the second of which preserved the pre-existing declaration:

> "The Government of the People's Republic of China on behalf of the Hong Kong Special Administrative Region interprets the requirement in article 6 concerning 'reparation and satisfaction' as being fulfilled if one or other of these forms of redress is made available and interprets 'satisfaction' as including any form of redress effective to bring the discriminatory conduct to an end."

Protection and remedies against any act of racial discrimination

167. Article 39 (1) of the Basic Law (full text at annex 1) provides that the provisions of the ICCPR and the ICESCR as applied to Hong Kong shall remain in force and shall be implemented through the laws of the HKSAR. Article 39 (2) provides that the rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless as prescribed by law, and that such restrictions shall not contravene the provisions of the preceding paragraph. Thus, complaints of racial discrimination against acts of the Government or a public authority may be challenged in the courts as being contrary to the fundamental rights and freedoms guaranteed in the ICCPR, the ICESCR and the Basic Law.

168. Additionally, as we explained in paragraph 56 of the thirteenth report, any act of racial discrimination by the Government or public authorities (or by any person acting on their behalf) would infringe the BORO. Section 6 of that Ordinance - "Remedies for contravention of Bill of Rights" - provides that:

> "A court or tribunal:
>
> "(a) in proceedings within its jurisdiction in action for breach of this Ordinance; and
>
> "(b) in other proceedings within its jurisdiction in which a violation or threatened violation of the Bill of Rights is relevant,
>
> may grant such remedy or relief, or make such order, in respect of such a breach, violation or threatened violation as it has power to grant or make in those proceedings and as it considers appropriate and just in the circumstances."

The remedy or relief granted by the court or tribunal may include an award of financial compensation. However - as the United Kingdom Government explained in paragraph 110 of its thirteenth (Metropolitan) report under the Convention (CERD/C/263/Add.7) - even where specific legislation against racial discrimination is in place, the finding by a court of a violation of human rights is not invariably followed by a payment of financial compensation. As the United Kingdom Government went on to explain, "in the well-established practice of the European Court of Human Rights a judgement finding a violation is sometimes said to constitute 'sufficient just satisfaction' in itself". It remains the case, as we stated in paragraph 56 of the thirteenth report, that this is equally applicable to the operation of article 6 of the Convention in respect of Hong Kong.

169. Some commentators have said that the Government is in breach of this article because there are no tribunals from which persons may seek just and adequate reparation or satisfaction for any damage suffered as a result of racial discrimination, unless the discriminatory act is applied by the Government. For this reason, they say, victims of racial discrimination are often reluctant to come forward with complaints because of the absence of statutory or institutional support. However, while there is no specific legislation against discrimination on the ground of race on the part of private individuals and organizations, there are provisions in the law that afford relevant protections and means of redress. Those provisions are discussed in paragraphs 71-73 above in relation to article 4.

170. Commentators have also said that, in the absence of independent channels of complaint, there was no - or inadequate - means of seeking redress against discriminatory attitudes on the part of public officials. Such attitudes are, it has been asserted, increasingly commonplace, particularly among those serving in the Correctional Services Department, the Immigration Department, the Labour Tribunal and the Legal Aid Department. They identify the Immigration Department as "the worst" in this respect, particularly in regard to its treatment of people from sub-Saharan Africa and South Asia.

171. Since these assertions have been made in very general terms, it is difficult to provide a specific response. But:

(a) Correctional Services Department: the Department's induction and ongoing training courses ensure that staff are familiar with relevant laws and policies. The programmes cover the United Nations Standard Minimum Rules for the Treatment of Prisoners, the BORO and the provisions of the Crimes (Torture) Ordinance. Training in nursing care enables staff to identify any signs of abuse. The courses emphasize that the law[41] requires officers to treat all persons in the Department's custody with respect and humanity, irrespective of their race, colour, or nationality. And they must recognize that all persons have the right to be treated properly, fairly and with respect to their dignity, whether they are members of the public, members of staff, or persons in custody. A high standard of conduct is maintained through enforcement of the discipline rules provided by law;

(b) Legal Aid Department: in 1998 and 1999, non-Chinese applicants lodged a total of 14 complaints against the Legal Aid Department. None alleged discrimination on the part of the Department's staff. Indeed, the Department has taken measures to ensure that the racial minorities have equal access to its services. For example, it provides interpreters to ensure that applicants' instructions are fully and properly conveyed and that differences of language do not give rise to misunderstandings. It has also taken measures to improve customer services and complaint handling procedures;

(c) Labour Tribunal: one of the judiciary's key missions is to ensure that everyone is treated fairly and equally before the courts. The Labour Tribunal is part of our court system. As such, it is accessible to all without distinction as to race, colour, or national or ethnic origin. The Tribunal addresses the cases before it in accordance with the law and established procedures.

Persons aggrieved by its decisions have access to well-established channels of appeal. Periodically, the Tribunal has issued circulars reminding its staff of the importance of providing a fair, just and responsive service to the public. Clear guidelines and training courses are provided to ensure that all staff are familiar with the Tribunal's procedures and that those procedures are applied equitably and consistently to all parties. The Tribunal has not received any complaints of discrimination on the part of its staff in the last two years. The Judiciary Administrator has undertaken to make a thorough investigation of the instances cited by our respondents on receipt of the details. We have asked the NGO that made the observation to provide this; and

(d) Immigration Department: in 1999, the Immigration Department received 189 complaints. The Ombudsman received and investigated another 38. Most were of an administrative or procedural nature. None related to racial discrimination on the part of staff. The Immigration Department is committed to providing efficient and courteous services to all members of the public, irrespective of race, nationality, age, or gender. To this end, all personnel are trained - and required - to treat every member of the public with respect, consideration, courtesy and compassion. Where necessary, and to ensure that persons of different races and ethnic origins have equal access to their statutory rights, the Department arranges for interpreters to be present. Posters promoting courteous services and informing the public of the channels for complaints are prominently displayed.[42] Independent mechanisms - both within and outside the Immigration Department - exist to handle and investigate complaints against the immigration services. Where complaints are substantiated, the Director of Immigration may take disciplinary action against the officer(s) concerned in accordance with the Immigration Service Ordinance (chap. 331), the Immigration Service Standing Order,[43] or the Civil Service Regulations.[44]

172. The Government is firmly opposed to all forms of discrimination and strives to foster a culture of courtesy, respect and tolerance throughout the public service generally. To that end, Civil Service (which, in Hong Kong, includes the disciplined services) training incorporates elements aimed at instilling human rights awareness. For example, the "Basic Training Package" for civil servants emphasizes the importance of impartiality in all dealings with the public, which naturally entails fair and equal treatment for persons of all races or nationalities. This is also emphasized in the "customer service" training courses for front-line officers. These efforts will continue.

173. But, where members of the public consider that a public officer has mistreated them, we strongly encourage them to bring the matter to the attention of the relevant departmental complaint channel. In the case of the disciplined services, the authorities are those listed in paragraphs 112-115 of the revised core document. And the Ombudsman will readily investigate all complaints against unreasonable conduct, or abuse of power, on the part of public officials. The Government views most seriously - and will thoroughly investigate - allegations of misconduct on the part of its personnel, including mistreatment arising from discrimination. Where, after such investigation, misconduct is established, it will take such corrective measures as it considers appropriate in the circumstances. Those measures may include disciplinary action.

Article 7. Measures to combat prejudice

Educational and promotional measures

The schools

174. The school curricula seek to teach respect for persons of all races, nationalities and origins. Race-related issues are addressed - at both the primary and secondary level - through such subjects as economic and public affairs, history, social studies and civic education. Additionally, the schools disseminate the anti-discrimination message through extracurricular activities. To support these endeavours, the Education Department has made various teaching and learning resources available to teachers. These include Education Television programmes, reading materials and teaching kits. And, to ensure that teachers' knowledge of human rights issues remains current, the Department regularly organizes seminars and training programmes on human rights and global citizenship. Additionally, the schools make use of government publications such as the storybooks "The Young Detectives" and "This is How Stars Should Really Be" that were specially commissioned with a view to fostering in our children a culture of tolerance and mutual respect.

175. Many tertiary institutions offer programmes on history and culture of different countries, either for specific humanities disciplines or as general education programmes for all their students. These programmes will enable students to gain a better understanding of people of different races and ethnic origins. Many institutions have established arrangements to foster student exchange with non-local institutions, to widen the students' exposure and enhance their appreciation of different cultures.

Public education

176. In paragraph 61 of the thirteenth report, we said that the Committee on the Promotion of Civic Education (CPCE) was the major actor in promoting human rights education among the general public. This remains the case and the Committee organizes a wide range of programmes designed for that purpose.[45] It has also established a full-time education unit to develop human rights education materials and programmes.

Other activities

177. Commentators have said that the Government should do more to educate people to accept minority groups. That is our intention and, in the two years 1998 and 1999, we spent some $6 million specifically for this purpose. The activities so funded are described in annex 5.

178. A commentator has suggested that our homepage should include a discrete site consolidating concerns expressed in relation to racial discrimination. We are in fact doing this, though indirectly, as the present report - which will be uploaded on the Internet - addresses the concerns that were expressed in the course of the consultations conducted prior to its drafting (see para. 181 below).

179. It was also suggested that Government should fund research in this area. In principle, we do. Academics and others wishing to conduct research in this area can compete for funding provided by the Research Grants Council. The criteria that the Council applies in assessing such bids are academic quality, intellectual content, relevance to the needs of Hong Kong and the potential for social, cultural or economic application.

Publication of the Convention and the present report

180. We have published booklets containing the full text (in Chinese and English) of the six human rights treaties that apply to Hong Kong (including our reservations and declarations). These are available to the public free of charge, as are our reports to the treaty monitoring bodies. We also upload the texts on our homepage.

181. In compiling this report, the Government sought the views of legislators, NGOs, minority groups and interested members of the public. Our approach was to publish an article-by-article outline of the topics that we proposed to cover. This outline included the Convention itself and the Committee's concluding observations on the thirteenth and fourteenth periodic reports. Respondents were asked to comment on the implementation of the Convention in relation to these topics and to draw attention to any additional issues that they considered we should include. We did not undertake to address every comment received (inevitably, some do not relate to the matters within the scope of the Convention). But, inspired by the Canadian practice cited in the Manual on Human Rights Reporting, we undertook to submit the original texts of all such comments to the Committee under separate cover.

182. The consultations took place between October and December 1999 over a period of six weeks. During that period, the government drafting team met NGOs and others to discuss the issues and to exchange views on the issues. We will publish the report - in bound, bilingual format - after its submission to the Committee. And, as we indicate in paragraph 178 above, the report will be uploaded on the Internet.

Notes

[1] This provision is made in the first paragraph of article 39. The second paragraph provides that the rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless prescribed by law, and that such restrictions shall not contravene the provisions of the preceding paragraph. The full text of the Basic Law is contained in annex 1 to the present report.

[2] Here, and throughout this document, "the thirteenth report" refers to the report on Hong Kong submitted under the Convention by the United Kingdom Government (CERD/C/263/Add.7 (Part II)) in April 1995 and considered by the Committee at its forty-eighth session in March 1996 (see A/51/18, chap. III).

[3] Here, and throughout this document, "the fourteenth report" refers to the report submitted under the Convention by the United Kingdom Government in August 1996 (CERD/C/299/Add.9) and considered by the Committee at its fiftieth session in March 1997 (see A/52/18, chap. III).

[4] At the end of the debate - as stated in the Introduction at paragraph 3 (b) - the then Legislative Council voted to reject the Bill.

[5] Examples of instances where a person's race might be a genuine occupational requirement could include roles in dramatic performances or other entertainment, participation as an artist's model in the production of works of art, or in visual images.

[6] In principle, this permits the importation of workers by employers from different sectors who can demonstrate a genuine need and who can prove that they have made every effort to give priority to local workers. There are no industry-specific quotas.

[7] There were 12,869 at the end of 1996.

[8] Imported workers who wish to lodge complaints have access to a 24-hour hotline.

[9] Imported workers may also be granted such permission.

[10] Article (24) (2) (3) of the Basic Law is reflected in Schedule 1 to the Immigration Ordinance which stipulates that a person is a permanent resident if he/she is of Chinese nationality and born outside Hong Kong to a parent who is a permanent resident and who had the right of abode in Hong Kong at the time of the birth of the person.

[11] The Home Affairs Department (HAD) conducts regular surveys to help the Coordinating Committee identify and examine the problems encountered by the new arrivals. HAD also obtains direct information from new arrivals themselves.

[12] The Lotteries Fund is established under the Public Finance Ordinance (chap. 2, sub. leg. D). Its purpose is to finance - by way of grants, loans, or advances - the operation or development of social welfare services and medical or educational projects with a welfare content.

[13] These do not include the "ex-China Vietnamese" discussed in paragraph 61.

[14] At the International Conference on Indo-Chinese Refugees (ICICR) hosted by UNHCR in Geneva in June 1989, all the main resettlement and first asylum countries and the country of origin agreed to a "Comprehensive Plan of Action" (CPA). This provided for the implementation of a fair and just refugee determination process. The key elements of Hong Kong's policy - maintenance of first asylum, screening of new arrivals to determine their status, resettlement of those found to be refugees and safe repatriation to Viet Nam of those found not to be refugees - formed part of the CPA.

[15] In accordance with the principles in the UNHCR Conclusions on the International Protection of Refugees.

[16] Although the closing date for this report was 31 December 1999, we considered this development to be of such importance as to justify its inclusion.

[17] Article 68 of the Basic Law and the Legislative Council Ordinance (chap. 542) in the case of the Legislative Council and the District Councils Ordinance (chap. 547) in that of the District Councils.

[18] Non-Chinese permanent residents who wish to acquire Chinese nationality in order to stand for election to the Legislative Council may do so in accordance with article 7 of the Nationality Law of the People's Republic of China (NLPRC) and the "Explanations of some questions by the Standing Committee of the National People's Congress concerning the implementation of the Nationality Law of the People's Republic of China in the Hong Kong Special Administrative Region". See also paragraph 114 (b) below.

[19] In Hong Kong, the rights pertaining to permanent residents correspond to those of citizens elsewhere.

[20] For an explanation of these terms, see paragraph 144 below.

[21] The scheme is not confined to persons from Mainland China.

[22] The Schedule entered into law (replacing the pre-existing Schedule) on 1 July 1997 with the enactment of the Immigration (Amendment) (No. 2) Ordinance.

[23] Schedule 1, paragraph 6 (1), provides that "a person who is not of Chinese nationality and who was a permanent resident of Hong Kong before 1 July 1997 is taken to be a permanent resident of the Hong Kong Special Administrative Region under paragraph 2 (d) and exempt

from the requirements under paragraph 3 if (a) he was settled in Hong Kong immediately before 1 July 1997; (b) after he ceased to be settled in Hong Kong immediately before 1 July 1997 he returns to settle in Hong Kong within the period of 18 months commencing on 1 July 1997; or (c) after he ceased to be settled in Hong Kong immediately before 1 July 1997 he returns to settle in Hong Kong after the period of 18 months commencing on 1 July 1997 but only if he has not been absent from Hong Kong for a continuous period of not less than 36 months".

[24] HCAL 134/1999.

[25] HCAL 129/1999.

[26] CACV 301/99.

[27] We will send the Committee copies of our reports under both Covenants after the submission of the present report.

[28] See also paragraphs 28-37 above in relation to article 2 of the Convention, particularly in respect of the so-called "two week rule".

[29] Like all employees in Hong Kong, foreign domestic helpers are entitled to not less than one rest day in every seven days (Employment Ordinance, sect. 17 (1)). A popular activity is to gather together in certain areas (particularly the Central District of Hong Kong Island) to meet friends, to picnic and to take part in various organized activities. There have been complaints that these gatherings engender a great deal of refuse.

[30] The "cut-off date" for this report was 31 December 1999. But we believe that the Committee will wish to know that the decision was taken to prohibit foreign domestic helpers whose contracts commenced on or after 1 February 2000 from undertaking driving duties. Others will not be affected until their current contracts expire. Employers who genuinely need their helpers to undertake such duties may seek exemptions from the Immigration Department.

[31] See also paragraph 28 (c) above in relation to article 2.

[32] Previously, there were two importation schemes: the SLS and the Special Labour Importation Scheme for the New Airport and related projects. The latter was terminated in March 1999.

[33] Section 3 (1) of the Registration of Persons Ordinance (chap. 177) requires every person in Hong Kong to be registered under the Ordinance, unless exempted from its provision by regulation. Regulation 3 of the Registration of Persons Regulations (chap. 177, sub. leg.) requires every person who is not an exempt or excluded person, or who is not the holder of a Hong Kong permanent identity card issued on an application outside Hong Kong, to register and apply for an identity card within 30 days of entering Hong Kong. Regulation 25 provides

exemptions in respect of bona fide travellers in transit through Hong Kong; persons who are not staying for more than 180 days; the aged, the blind and the infirm; and children under 11 years of age.

[34] Namely: Chinese, English, Tagalog, Hindi, Indonesian, Thai and Sinhalese.

[35] This rule does not apply to children under 18, whether or not they were born in Hong Kong.

[36] On, for example, medical or social grounds.

[37] Essentially, the scheme comprises cash grants to expedite the integration of children from the Mainland into local schools. The amount will be increased from $2,000 to $2,750 for primary levels and from $3,300 to $4,080 for secondary levels per child with effect from April 2000. See paragraph 157 (b) below.

[38] The reduction is a consequence of the Government's policy of fostering "mother tongue" (that is, Cantonese) as the principal medium of instruction. We explained the policy in paragraphs 519 to 524 of our report under the ICESCR, in relation to article 13 of that Covenant. Those paragraphs are reproduced at annex 13 for ease of reference.

[39] Section 74 of the Education Ordinance (chap. 279).

[40] However, the Director of Education may approve an exception in favour of a class of persons holding a particular religious faith.

[41] Prison Rules (chap. 234, sub. leg.).

[42] The posters are in Chinese and English. They advise members of the public who consider that they have not been treated fairly or courteously to raise the matter on the spot with the officer-in-charge, or to telephone the Customer Services Unit (telephone numbers are provided), or to write to the Chief Immigration Officer (Management Audit Division) (the address is provided).

[43] The Standing Order is made by the Director of Immigration under section 9 of chapter 331.

[44] Volume II of the Government Regulations made by or with the authority of the Chief Executive.

[45] Between 1995 and 1998, the Committee's programmes cost a total of about $20 million (US$ 2.56 million).